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Supreme Court of the United States

OCTOBER TERM, 1952

20  
No. 620

BENNIE DANIELS AND LLOYD RAY DANIELS,  
PETITIONERS.

vs..

ROBERT A. ALLEN, WARDEN, CENTRAL PRISON  
OF THE STATE OF NORTH CAROLINA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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PETITION FOR CERTIORARI FILED DECEMBER 27, 1951

CERTIORARI GRANTED MARCH 3, 1952.

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 626

BENNIE DANIELS AND LLOYD RAY DANIELS,  
PETITIONERS,

vs.

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OF THE STATE OF NORTH CAROLINA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS  
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**IN UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF NORTH CAROLINA**

No. 449B

BENNIE DANIELS and LLOYD RAY DANIELS, Petitioners,

vs.

J. P. CRAWFORD, Warden, Central Prison of the State of  
North Carolina, Raleigh, North Carolina, Respondent

PETITION FOR WRIT OF HABEAS CORPUS—Filed August 29,  
1951

To the District Court of the United States for the Eastern  
District of North Carolina:

The petition of Bennie Daniels and Lloyd Ray Daniels,  
respectfully shows:

1. That they are citizens of the United States of America  
and the State of North Carolina, and members of the Negro  
or colored race.

2. That they are at the present time unjustly and unlaw-  
fully detained and imprisoned at the Central Prison of the  
State of North Carolina, Raleigh, North Carolina, by the  
respondent, J. P. Crawford, Warden of said prison, by  
virtue of a judgment and sentence of death by asphyxiation  
pronounced upon them by the Superior Court, Pitt County,  
North Carolina, on June 6, 1949, upon conviction for the  
[fol. 7] crime of murder in the first degree.

Petitioners aver that they are not guilty of the offense  
for which they were tried, convicted and are presently de-  
tained by the respondent in the death house of the Central  
Prison of the State of North Carolina awaiting the execu-  
tion of sentence of death by asphyxiation on June 9, 1950  
and that the said imprisonment, restraint and sentence are  
illegal and void in that during the trial of petitioners before  
the Superior Court of Pitt County the petitioners were de-  
prived of life and liberty without due process of law and  
without being afforded the equal protection of the laws all in

violation of the Fourteenth Amendment to the United States Constitution.

In order that this Court may fully appreciate the grounds for the instant petition, petitioners set forth herein the circumstances leading up to the instant petition and then, in detail, petitioners will set forth the specific respects in which it is alleged that petitioners' rights under the Fourteenth Amendment have been so violated as to render the judgment and sentence of conviction null and void.

William Benjamin O'Neal, a taxicab driver, was brutally murdered some time late Saturday night, February 5th, 1949. His body was found in a horribly mutilated condition, due to many knife wounds and heavy blows several feet from his taxicab. The scene of the crime was near a tobacco barn on a dark, deserted road several miles from Greenville, Pitt County. The body of O'Neal, a white man, [fol. 8] was first found before noon of February 6th. Between 1:00 and 1:30 A. M. of February 7th, the petitioner Lloyd Ray Daniels, a 17 year old illiterate Negro, was arrested by six white police officers and then in the company of three of those officers he was taken to and placed in a jail cell in Williamston, Martin County, 30 miles from Greenville. At some time between 5 and 6 A. M. on the morning of February 8th, the petitioner Bennie Daniels, also a teen-age illiterate Negro, was arrested by four white men and taken by them to the same jail. An indictment charging petitioners with the wilful and premeditated murder of William Benjamin O'Neal was returned by the March Term, 1949, of the Grand Jury of Pitt County comprised of 18 persons, none of whom were Negroes.

At the time petitioners were arraigned after indictment before the Superior Court of Pitt County counsel was appointed for them. Petitioners pleaded to the charge but their trial was continued to the next succeeding Term as the defendants were committed to the State Hospital for Insane Negro persons for the purpose of examining into their mental condition. Thereafter petitioners obtained their own counsel to replace Court-appointed counsel and on March 24, 1949, the Superintendent of the aforesaid Hospital reported that petitioners had sufficient intelligence to distinguish right from wrong.

On the calling of the case for trial at the May 30th Term, 1949, of the Superior Court of Pitt County, the petitioners moved to quash the indictment and challenge to the array [fol. 9] of Petit Jurors on the grounds that Negroes had been systematically and arbitrarily excluded from the Grand and Petit Juries of Pitt County, solely for reasons of race or color thereby depriving petitioners of the equal protection of the laws guaranteed to them by the Fourteenth Amendment of the United States Constitution. A hearing was held before the Honorable Clawson L. Williams, Judge Presiding, prior to the selection of the Petit Jury, upon the aforesaid motion and evidence was presented by petitioners and by the State. At the conclusion of the hearing the motion to quash the indictment and the challenge to the array were both denied. Thereafter a Petit Jury was impanelled, which Jury included one Negro.

At the trial the State offered in evidence alleged oral and signed confessions by petitioners that they had murdered O'Neal. Upon timely objection by counsel for petitioners, the Trial Judge held a hearing without the presence of the Petit Jury on the question of the admissibility of the alleged confessions and determined them to be voluntary and, therefore, competent and admissible. The State introduced in evidence the alleged confessions of the petitioners and other evidence intended to corroborate the charge of murder. Petitioners testified on their own behalf and denied guilt of the crime as charged, denied ever having signed the alleged confessions, asserted that the self incriminating statements which they may have made orally were induced by force and fear, and offered in evidence testimony tending to establish their innocence of the crime. At the conclusion of the trial motions to dismiss were denied [fol. 10] and the case submitted to the Jury upon a lengthy set of instructions which took from the Jury the question whether the alleged confessions were voluntary. The Jury found the petitioners guilty of murder in the first degree as charged, without recommendation of mercy, and sentence of death was imposed on the 6th day of June, 1949.

Upon the pronouncement of judgment counsel for petitioners in open court orally served notice of appeal. The Judge Presiding thereupon allowed petitioners sixty days



from the date of judgment in which to make and serve a statement of the case on appeal in accordance with the local practice; the State was allowed forty-five days thereafter to prepare and serve amendments to the petitioners' statement or a counter-statement. The transcript of the record made in the Trial Court, which transcript is presented herewith to this Court and is made a part hereof, comprises 4 volumes, totalling 704 typewritten pages. Counsel for petitioners received the transcript from the Court Reporter on or about forty-five to fifty days after June 6th. Thereafter counsel for petitioners prepared a statement of the case on appeal and served the same upon the Solicitor of Pitt County on August 6, 1949. Within forty-five days thereafter, the Solicitor served and filed 132 exceptions to the case on appeal and, in addition, moved to strike the case on appeal on the grounds that the last day for petitioners [fol. 11] to serve such statement upon the Solicitor was August 5th, one day prior to the date of service. A hearing on the motion was held on September 29, 1949, before Williams, J., and at the conclusion thereof the motion of the Solicitor to strike petitioners' case on appeal was granted, and an order entered thereon on the grounds that the statement had been served one day late. The effect of the order striking the statement of the case on appeal was to preclude an appeal on the merits to the North Carolina Supreme Court.

On September 27, 1949, prior to the order of Williams, J., petitioners filed with the Supreme Court of North Carolina a petition for writ of certiorari for the purpose of extending the time within which to docket their appeal in the said Supreme Court; and subsequent to the order of September 29 of Williams, J., a supplemental petition for a writ of certiorari was filed in the said Supreme Court which recited the order of Williams, J., and prayed the North Carolina Supreme Court for leave to bring the cause before the said Court.

In a decision dated November 2, 1949 (*State v. Daniels*, 231 N. C. 17, 56 S. E. 2d 2) the petition for certiorari was denied. In the opinion by Seawell, J., for the North Carolina Supreme Court, the reasons assigned by counsel for petitioners for the one day delay were noted, considered, and rejected, and the petition for certiorari was denied.

without examination of the errors assigned. The Court indicated, however, that serious Federal questions were [fol. 12] present. The objections made to the exclusion of Negroes from the Grand and Petit Juries, and to the admission in evidence of the alleged confessions were noted and the Court then wrote as follows:

" . . . Both these objections involve questions of invasion of constitutional rights which, in the instant case, can be presented only through matter extraneous to the record. Ordinarily in this situation resort may be had to writs of error *coram nobis*."

"Since here the authority for the writ stems from the supervisory power given the Supreme Court in the section of the Constitution cited, it is necessary that an application be made to this Court for permission to apply for the writ to the Superior Court in which the case was tried. In *re Taylor*, *supra*, 230 N. C. 566, 569, 53 S. E. 2d 857, 859. It is granted here only upon a 'prima facie showing of substantiality,' and it is observed in the *Taylor* case last cited, 'The ultimate merits of the petitioner's claim are not for us, but for the trial court.'"

"On consideration in the trial court, if the decision is adverse to the petitioners, the Court will find the facts, and an appeal to this Court will lie as in other cases'."

Subsequently, in accordance with the foregoing suggestion, upon notice to the Attorney General of North Carolina and the Solicitor of Pitt County, petitioners filed a petition with the Supreme Court of North Carolina for permission to file a petition for writ of error *coram nobis* in Superior Court of Pitt County. That petition set forth the errors of law and fact committed by the Trial Court and designated the Federal questions presented.

[fol. 13] The latter petition was denied in a *per curiam* opinion (*State v. Daniels*, 231 N. C. 241, 56 S. E. 2d 546); dated December 14th, 1949, which described briefly the proceedings and then held:

"Their petition does not make *prima facie* showing of substance which is necessary to bring themselves within the purview of the writ. Citations, *supra*.

"The petition is insufficient to justify the Court in issuing the writ and instigating procedure in the court below.. State v. Daniels, *supra*; In re Taylor, (229 N. C. *supra*)."

Thereafter the Attorney General of North Carolina moved that the case and record be docketed and the appeal dismissed. Upon said motion the North Carolina Supreme Court held (*Storie v. Daniels*, 231 N. C. 509, 57 S. E. 2d 653):

"We have carefully examined the record filed in this case and find no error therein. For the causes stated the motion of the Attorney General is allowed; the judgment of the lower court is affirmed, and the appeal is dismissed."

On January 31, 1950, Mr. Chief Justice Vinson of the United States Supreme Court signed an order, upon motion of petitioners, extending their time to file with that Court a petition for a writ of certiorari to March 14, 1950; by order dated March 2, 1950, Chief Justice Stacey of the North Carolina Supreme Court stayed the sentence of death [fol. 14] pending the disposition of the petition to the United States Supreme Court.

In its brief upon the aforesaid petition, the State of North Carolina asserted the following:

"Since the Supreme Court of North Carolina merely held that the petition was insufficient, there is no reason why the Petitioners cannot now avail themselves of this remedy [petition to the North Carolina Superior Court for writ of error *coram nobis*] if they will file a proper and sufficient petition before the Supreme Court of North Carolina. The Respondent, therefore, contends that the Petitioners have never exhausted their remedies afforded by the Supreme Court of North Carolina for a review of this question. The Supreme Court of North Carolina has, therefore, not passed upon the constitutional issues now raised by the Petitioners." *Daniels, et ano. v. State of North Carolina*, United States Supreme Court, October Term, 1949, No. 412, Misc., Respondent's Brief, p. 28.

On May 8, 1950, the United States Supreme Court denied the aforesaid petition for a writ of certiorari without opinion.

Petitioners thereupon submitted another petition to the Supreme Court of North Carolina for a writ of error *coram nobis* in order to obtain a review, for the first time, upon the merits of the constitutional issues raised. But the said petition was denied by a decision of the North Carolina Supreme Court dated May 24, 1950, wherein the North Carolina Supreme Court indicated that it considered that the second petition for a writ of error *coram nobis* presented no new facts and that said petition was therefore insufficient.

[fol. 15] Petitioners are informed by their counsel and believe that under the law of the State of North Carolina the date of execution is automatically fixed for the third Friday succeeding the aforesaid decision by the Supreme Court of North Carolina and that therefore the date for the execution of the sentence of death is presently fixed for June 9, 1950. Petitioners are informed by their counsel, Herman L. Taylor, Esq., that in a conversation between said attorney and Devins, J., of the North Carolina Supreme Court, that upon the filing and issuance of the instant writ a stay of execution will be granted by said North Carolina Supreme Court. Petitioners at this time, however, call to the attention of this Court that they are presently under sentence of death *although petitioners have never had the benefit of a review of the serious Federal questions presented by their convictions.*

Petitioners now turn to the respects in which they claim that the judgments and sentences of conviction are illegal, null and void.

A. The convictions of petitioners deprive them of their rights and their liberty without due process of law because of the admission into evidence of their alleged confessions; the convictions of petitioners are therefore null and void, and their imprisonment and restraint by respondent illegal.

The murder of William Benjamin O'Neal for which petitioners were indicted and convicted occurred late in the [fol. 16] night of Saturday, February 5, 1949. Sheriff Tyson of Pitt County, where the crime was committed, tes-



tified that the police had received an undisclosed tip which led them to search out the petitioners. On the morning of Sunday, February 6th, several officers went to the home of the petitioner Lloyd Daniels and there questioned his mother as to his whereabouts. On the Saturday night of the murder, the petitioner Bennie had slept at the home of his cousin, the petitioner Lloyd, and then Sunday afternoon petitioners went into the City of Greenville. There petitioners went to a movie theatre and then to the home of the petitioner Lloyd's sister. When questioned, the petitioner Lloyd's mother had notified the police that the petitioner Lloyd had gone to see his sister. At the home of the petitioner Lloyd's sister, petitioners Lloyd and Bennie learned that men bent on violence were looking for them in connection with the murder of O'Neal. Petitioners went down to the railroad tracks together, anxious and concerned about the threat of which they had heard and while the petitioner Bennie decided to remain in the nearby woods for a while, the petitioner Lloyd went back into town and took a bus to the home of his girl friend. He arrived there 6:30 P. M. on the Sunday of February 6th. It was at this home that the petitioner Lloyd was arrested by six white officers of whom at least three were armed.

The petitioner Lloyd's arrest was made sometime between 1:00 A. M. and 1:30 A. M., February 7th. The arrest of petitioner Lloyd was made without a warrant. The petitioner Lloyd was handcuffed and he and the officers walked about a mile through the night to where the police car was parked. The petitioner Lloyd was not warned that whatever he would say might be used against him; nor was he told where he was being taken; and he was not told of his right to stand mute or of his right to the advice of friends or counsel, although petitioners are informed that §§ 15-47 of c. 15, Art. 6, of the General Statutes of North Carolina provides:

"Upon the arrest, detention, or deprivation of the liberties of any person by an officer in this state, with or without warrant, it shall be the duty of the officer making the arrest to immediately inform the person arrested of the charge against him . . . ; and it shall be the duty of the officer making the arrest to permit

the person so arrested to communicate with counsel and friends immediately, and the right of such persons to communicate with counsel and friends shall not be denied."

Upon reaching the police car after his arrest, the petitioner Lloyd was placed in the back seat with Officer Gibbs and in the front seat were Officer Manning and Sheriff Tyson. The petitioner Lloyd remained handcuffed; each of these police officers was armed. After traveling for a few minutes, the police car "broke down" in a dark, deserted area and remained there for about 30 minutes. Tyson and Manning went out to "inspect" the car and left Gibbs alone with Lloyd in the back seat. As petitioner Lloyd testified upon the trial:

"When they got me they didn't tell me nothing. Not with that many they didn't tell me nothing and he told [fol. 18] me to come on and get my hat. I went and got my hat and they pushed me out the door. I went out and asked them what they got me for and they said I would find out sooner or later and I said 'I didn't do nothing but have a fight in Bonner Lane' and Mr. Gibbs said 'You are a lie, you did' and I told him 'No sir, I didn't' and he kept right on cursing and pushing me right on in front of the car. I went on and got in the car and the rest of the officers went to the other car and talked—they didn't get in the car with us then. He asked me didn't I kill this guy. I said 'no' and he said 'You are lying' and he put his hand on his pistol. He said 'You did kill him'—I said 'I didn't kill him'—and he said 'You will find out', and the rest of the officers . . . came and got in the car and we started to Wilson . . . 'After we started off in the car he asked did I kill this guy and I said 'No, I don't know anything about it'; he put his hand on his pistol and I asked him what was he going to do, kill me. He said he was going to kill me if I didn't tell him the truth and I told him I didn't know nothing to tell him. He stopped on the road just before we got on the highway and said 'Didn't you kill this guy?' and he said 'If you don't tell me you are not going to see your mother

again' and he got mad and went to cursing and I told him".

Subsequently, the petitioner Lloyd was brought to the jail at Williamston and there put in a cell. (It should be noted that while the murder was committed a few miles from Greenville and petitioners lived in and were tried in Pitt County, when arrested, however, petitioners were taken to Williamston, in Martin County, approximately 30 miles from Greenville.)

Even after he was thus arrested, the petitioner Lloyd was still not arraigned or brought before a magistrate although he is informed by his counsel that it is provided as follows by General Statutes of North Carolina, c. 15, Art. 6, §§ 15-46:

[fol. 19] "Every person arrested without warrant shall be either immediately taken before some magistrate having jurisdiction to issue a warrant in the case, or else committed to the county prison, and, as soon as may be, taken before such magistrate, who, on proper proof, shall issue a warrant and thereon proceed to act as may be required by law."

The petitioner Bennie remained in the woods until late Sunday night, February 6th, when he went to the home of his cousin and then went to his own home. There he told his mother of the threats against his life that he had heard of in Greenville. Fearful that police or a mob in search for the petitioner Bennie might also lynch her and the members of her family, the petitioner Bennie's mother told him to go to the farm of one Moore. It was there that the petitioner Bennie was picked up at about 5:00 A. M. on Tuesday morning, February 8, 1950.

The petitioner Bennie was arrested by four white men, including at least one armed officer. He was handcuffed and taken from one car to a second car. As in the case of the petitioner Lloyd, the petitioner Bennie, too, was taken to the jail in Williamston out of Pitt County without being told where he was being taken; he was not told of his right to stand mute and was not told of his right to the advice of friends and counsel guaranteed to him under

the laws of North Carolina. And also, as in the case of the petitioner Lloyd, the petitioner Bennie was not brought before a Magistrate or other hearing officer after his arrest. Instead, he was put in a jail cell in a county out of [fol. 20] Pitt County and without any notification to his friends or family.

Sometime in the late afternoon of February 8th, the petitioner Lloyd was brought down to the office of Sheriff Roebuck and the petitioner Bennie was brought into a separate room in that office. The petitioner Bennie had been questioned, threatened and beaten in his cell before being brought down to the office. Petitioners were then questioned separately for a period of at least an hour or an hour and a half, with at least six or seven white men present. The police officers testified at the trial that at the end of that time, and sometime between 6:00 and 7:00 P. M. on February 8th, full confessions had been obtained from each of the petitioners, that the two were confronted with each other at that time and each of the confessions read to both of them, that the confessions were acknowledged by the petitioners to be true statements, and that the petitioner Lloyd then made his mark on his statement and the petitioner Bennie signed his. The petitioners testified to the contrary and the fact is that they never acknowledged that they had committed the murder of O'Neal and that they never signed or made their mark on the alleged confessions. The language employed in the alleged confessions is language alien to the vocabulary, the grammatical faculties and the mentality of petitioners who, prior to the trial, had been committed to a state institution for examination to determine their mental competency.

It was never, at any time, disputed by the State of North [fol. 21] Carolina that prior to the alleged confessions neither the petitioner Lloyd nor the petitioner Bennie had had the benefit, advice of or contact with friends, family, or counsel; nor is it disputed that 10 to 15 minutes after the confessions were allegedly signed, the petitioners were taken from the jail in Williamston to Raleigh, 125 miles from Williamston and almost 100 miles from Greenville.

Petitioners are informed by their counsel and believe that the alleged confessions obtained in the manner described



violate the constitutional standards as defined by the United States Supreme Court in *Ward v. Texas*, 316 U. S. 547, 555:

"This Court has set aside convictions based upon confessions extorted from ignorant persons who have been subjected to persistent and protracted questioning, or who have been threatened with mob violence, or who have been unlawfully held incommunicado without advice of friends or counsel, or who have been taken at night to lonely and isolated places for questioning. Any one of these grounds would be sufficient cause for reversal."

The petitioners are Negroes of a southern community. The petitioner Lloyd was 17 years of age when he was arrested and the petitioner Bennie was 16 years. The petitioner Lloyd is one of fifteen children; he has never had any schooling in his life, his only occupation has been that of farming, and he can neither read nor write. The petitioner Bennie has had two years of schooling but can not read or write except to write his own name; he, too, had never engaged in any occupation more sophisticated than [fol. 22] that of farming. The crime for which petitioners were arrested was the murder of a white man and that murder was committed in an extraordinarily brutal fashion. O'Neal had been stabbed, cut and bludgeoned to death, so that his features were practically beyond recognition. Such a crime is well calculated to inflame the passions of even a conservative community. The petitioners were warned, before their arrest, that the murder had been committed and that they were being sought for that murder. It was reported to petitioners that "this man was killed out in the country and they said wherever they found you that's where they are going to leave you". Both petitioners were arrested in the middle of the night by numerous white police officers, who were armed, and then petitioners were handcuffed. Both petitioners were walked a considerable distance in the dark and then driven for a considerable distance in the dark. In the instance of the petitioner Lloyd, the ride also included a delay of about 20 minutes on a desolate road. Both were driven to a jail in a different county and

community from their own without notice thereof to friends or family. In neither instance did the police obtain a warrant of arrest and in both instances the petitioners were unlawfully detained without being arraigned and without a hearing until sometime after their alleged confessions were reduced to writing. In the case of the petitioner Lloyd, he was thus unlawfully detained for about 42 hours before his final alleged confession was reduced to writing; the petitioner Bennie was thus held without a hearing for about 14 hours. The alleged confessions of petitioners were made [fol. 23] without their having had the benefit of the advice of friends, relatives or counsel and without being informed of their right to such assistance, and those confessions came at the end of persistent questioning in the presence of six or seven white police officers and a stenographer who was there present waiting to prepare their written confessions. Ten or fifteen minutes after the confessions were allegedly signed, the petitioners were taken to the jail house in another county, still more distant from their homes, friends and families.

Petitioners are informed by their counsel and believe that the foregoing facts—which have not been disputed by the State of North Carolina to date—constitute the inherently coercive circumstances which, under the decisions of the United States Supreme Court, render any resulting confession invalid and inadmissible. The youthful age of the petitioners (*Chambers v. Florida*, 309 U. S. 227; *Haley v. Ohio*, 332 U. S. 596); their illiteracy (*Harris v. South Carolina*, 338 U. S. 68; *White v. Texas*, 309 U. S. 63); the brutality of the crime and the threats of mob violence (*Chambers v. Florida*, *supra*; *Ward v. Texas*, *supra*); the circumstances of their arrest and being taken to a jail in a different county (*Ward v. Texas*, *supra*); their detention without hearing or arraignment (*Harris v. South Carolina*, *supra*; *Turner v. Pennsylvania*, 338 U. S. 62; *Watts v. Indiana*, 338 U. S. 49; *Haley v. Ohio*, *supra*) and without any communication with family, friends or counsel (*Harris v. South Carolina*, *supra*; *Ashcraft v. Tennessee*, 332 U. S. 143; *White v. Texas*, *supra*; *Chambers v. Florida*, *supra*); [fol. 24] and the harrowing questioning which led up to the alleged confessions all combine to make those documents tainted and constitutionally inadmissible.

Petitioners are informed and believe that, in view of the facts set forth concerning their alleged confessions, their convictions are null and void, and their restraint by respondent illegal so that they are entitled to the writ of habeas corpus here prayed for under Section 2241(c) (3) of Title 28 of the United States Code.

B. Petitioners have been deprived of the equal protection of the laws by the discriminatory and arbitrary exclusion of Negroes from Grand and/or Pettit Juries in Pitt County, solely for reasons of race, including the Grand Jury which indicted and the Pettit Jury which convicted petitioners. The convictions of petitioners are therefore null and void, and the imprisonment and restraint of petitioners by respondent illegal.

According to the United States census for 1940 the population of Pitt County consisted of 32,151 white persons and 29,086 Negroes. Of this total population, 17,323 white persons and 13,762 Negroes were above the age of 21. Negroes thus constitute 47.5% of the total population and about 44% of persons above 21 in Pitt County according to the 1940 census.

Prior to 1947 no Negro had served on the Grand Jury in the Superior Court of Pitt County in at least more than twenty years. And prior to 1947, only in a very few and [fol. 25] desultory instances were Negroes called, summoned and served on Petit Juries.

In 1947 the jury boxes of Pitt County Superior Court were purged, and all names of Jurors therein removed therefrom, and the scrolls containing the names destroyed, and the Board of Commissioners proceeded to prepare a new jury list. The tax list of the County and the voting registration lists of the County were used to compile the jury list. Each Commissioner was then obliged to select from his list persons whom he knew to possess the moral character and intelligence to serve as jurors. Each Commissioner was a white man and was assisted by another white man familiar with the residents of the various districts. Thereafter each Commissioner submitted his selections to the entire Board for approval. From the jury lists thus prepared the Sheriff summoned the persons whom he could find to serve as jurors. The names of the jurors summoned

were placed on slips of paper, thrown into a hat, and Grand and Petit Jurors were picked according to the slips picked at random out of the hat by a child of less than 10 years of age.

While the number of Negroes in the total population and the population of persons over 21 was approximately 44%, the 1946 tax list (which contained a separate list for Negro tax-payers) included 5,173 Negro tax-payers of a total of 15,517 tax-payers so that about 33 $\frac{1}{3}$ % of the names on the tax list were Negroes. And the registration list of 1946 [fol. 26] used by the Commissioners contained the names of 423 Negroes from among a total of 20,488 registrants—2% of the persons on this list were Negroes. Despite the foregoing percentage of Negroes eligible for Petit and Grand Jury duty, *even after 1947 no Negro was chosen or served on a Grand Jury*. And while Negroes appeared on Petit Juries after 1947, those appearances were infrequent and desultory; the number of Negroes who served on Petit Juries was less than 5%—a minute figure in comparison with the total number of eligible Negroes in the community.

Petitioners are informed by their counsel and believe that in view of the percentage of Negroes eligible for jury duty in Pitt County, the total exclusion of Negroes from Grand Juries and the infinitesimal number of Negroes on Petit Juries in Pitt County amounts to discrimination against Negroes on those juries and that the indictment and conviction of petitioners by juries wherein Negroes were thus excluded for reasons of race deprived petitioners of the equal protection of the laws under the decisions of the United States Supreme Court. *Strauder v. West Virginia*, 100 U. S. 303; *Neal v. Delaware*, 103 U. S. 370; *Bush v. Kentucky*, 107 U. S. 110; *Norris v. Alabama*, 294 U. S. 587; *Hale v. Kentucky*, 303 U. S. 613; *Pierre v. Louisiana*, 306 U. S. 354; *Smith v. Texas*, 311 U. S. 128; *Hill v. Texas*, 316 U. S. 400; *Patton v. Mississippi*, 332 U. S. 463; *Brunson, et al. v. North Carolina*, 333 U. S. 851.

Petitioners are informed by their counsel and believe that the decision of the United States Supreme Court in *Cassell* [fol. 27] *v. Texas* decided on April 24, 1950, a date after the trial of petitioners, requires that the petition prayed for herein be granted. For according to petitioners' counsel



the United States Supreme Court there held that: (1) the consistent limitation of the number of Negroes selected for jury service, even though that number is not disproportionate to the number of Negroes eligible for jury service, "would violate our Constitution"; and (2) the selection of jury lists by white jury commissioners "only from those people with whom they are personally acquainted" resulting in the total absence of Negroes from the indicting Grand Jury constitutes discrimination. The evidence upon the trial of petitioners shows and petitioners allege herewith that the type of limitation of Negro jurors proscribed by the Supreme Court in *Casse v. Texas* has been practiced in Pitt County; and that in the selection of the jury lists for Pitt County the white jury commissioners and their assistants made their selection solely upon the basis of their personal acquaintance with the names presented to those commissioners.

Petitioners are informed and believe that in view of the facts set forth herein concerning the selection of jurors in Pitt County, their convictions are null and void, and that their imprisonment and restraint by respondent is illegal so that they are entitled to the writ of habeas corpus here prayed for in accordance with Section 2241 (c) (3) of Title 28 of the United States Code.

[fol. 28] C. The failure of the Trial Judge upon the trial of petitioners to leave to the jury the question whether the alleged confessions of petitioners were made freely and voluntarily was in violation of the Due Process Clause of the Fourteenth Amendment; the convictions of petitioners are therefore null and void, and the imprisonment and restraint of petitioners by respondent illegal.

At the conclusion of the trial the Trial Judge gave the Jury an instruction of unusual length, prolixity and complexity. In the course of that instruction he charged the Jury as follows:

"Ladies and Gentlemen of the Jury: With respect to the statements referred to in the alleged confessions there has been some argument about whether or not they were made freely and voluntarily. I instruct you that the circumstances and conditions under which the statements made were investigated by the Court under

preliminary examination of the Court as to whether they were made freely and voluntarily; it is determined by the Court that they were made freely and voluntarily and are competent to be admitted in evidence but you are the sole judges of the weight to be given them and the credit to be given them."

"And, with respect to whether the statements were made freely and voluntarily under the law it is the province of the Court to determine that, in order to determine whether or not they are admissible as evidence. The Court has decided that they were admissible as evidence because they were made without coercion or inducement, freely and voluntarily. But, you are not to infer from that that the Court has any intimation or wishes to be giving any intimation as to the weight you will give that evidence. That is solely a matter for you."

The aforesaid instruction plainly informed the Jury that it was not to consider whether the alleged confessions, which [fol. 29] alone could sustain the State's case, were made freely and voluntarily. The Jury was permitted to pass upon the weight to be assigned to those alleged confessions but that function was illusory at best for if the Jury was obliged to accept the confessions as having been made freely and voluntarily it could hardly fail to give these confessions conclusive weight. It is difficult to conceive of any evidence more damaging and more conclusive than a confession made freely and voluntarily.

The question whether the alleged confessions were made freely and voluntarily was a disputed material issue of fact upon the trial. It was, of course, a proper function of the Trial Judge to pass upon that question for the purpose of determining the admissibility of the alleged confessions. But the Trial Judge went further and took that question of voluntariness from the consideration of the Jury entirely as that question related to the innocence or guilt of the defendants, and, in effect, directed the verdict of the Jury on a material issue of fact in a criminal case.

Petitioners are informed and believe that the right to trial by jury in a capital cause is the kind of fundamental and

basic right which is guaranteed under the Due Process Clause of the Fourteenth Amendment to the United States Constitution as essential to "a fair and enlightened system of justice" (*Palko v. Connecticut*, 302 U. S. 319, 325.); and as an instruction which takes from a jury a material and disputed issue of fact is in violation of such a fundamental right to trial by jury (*Christoffel v. United States*, 338 U. S. [fol. 30] 84; *Fleischman v. United States*, 174 F. 2d 519; *Bryan v. United States*, 174 F. 2d 525; *Konda v. United States*, 166 F. 91, 93), the action of the Trial Judge was "such as to deprive petitioners of a trial according to the accepted course of legal proceedings" (*Buchalter v. New York*, 319 U. S. 427, 431) in violation of the Due Process Clause of the Fourteenth Amendment. In *Lyons v. Oklahoma*, 322 U. S. 596, 601, the United States Supreme Court stated that due process under the Fourteenth Amendment requires that the "instruction fairly raises the question of whether or not the challenged confession was voluntary". Under the test of the due process requirement as thus stated, the instruction of the Trial Judge constituted fundamental constitutional error.

Petitioners are informed and believe that, in view of the facts set forth as to the instruction to the Jury by the Trial Judge upon the trial of petitioners, their convictions are null and void, and their imprisonment and restraint by respondent illegal so that they are entitled to the writ of habeas corpus here prayed for in accordance with Section 2241 (c) (3) of Title 28 of the United States Code.

4. That as aforesaid the petitioners have exhausted all of their state remedies, including a petition for a writ of certiorari to the United States Supreme Court, and petitioners are, therefore, remediless save in this Court and by this procedure.

5. That no previous application has been made for the [fol. 31] writ below prayed.

Wherefore, the premises considered the petitioners pray:

(1) That a writ of habeas corpus directed to the said respondent, J. P. Crawford, may issue in their behalf so that petitioners may be brought forthwith before this Court;

(2) That said respondent be required to appear and answer the allegations of this petition;

(3) That following a full and complete hearing this Court relieve petitioners of said unlawful detention, imprisonment and sentence of death;

(4) That in the event that the Supreme Court of the State of North Carolina or any Justice thereof shall refuse to stay the execution of petitioners pending the determination of the instant petition before this Court that the respondent, J. P. Crawford, and his agents, officers and/or employees be stayed from executing the judgment and sentence imposed by the Superior Court of Pitt County, North Carolina, upon petitioners or from otherwise taking any action or proceedings against said petitioners pending the final determination of the instant petition;

(5) And for such other and further relief as to this Court [fols. 32-36] may seem just and proper under the circumstances.

Bennie Daniels. Lloyd Ray Daniels.

*Duly sworn to by Bennie Daniels and Lloyd Ray Daniels.  
Jurats omitted in printing.*

[fol. 37]

[File endorsement omitted]

IN UNITED STATES DISTRICT COURT

ANSWER OF RESPONDENT, J. P. CRAWFORD, WARDEN OF THE  
CENTRAL PRISON OF THE STATE OF NORTH CAROLINA,  
RALEIGH, N. C.—Filed June 20, 1950

The Respondent, J. P. Crawford, Warden of the Central Prison of the State of North Carolina, Raleigh, N. C., answering the Petition for Writ of Habeas Corpus, filed herein by Petitioners Bennie Daniels and Lloyd Ray Daniels, for his answer, says:

1. The allegations of Paragraph 1 of the Petition are admitted.

2. Answering the allegations of Paragraph 2 of the Petition, the Respondent admits that the Petitioners are confined and in his custody in the Central Prison of the State of North Carolina, Raleigh, N. C., by virtue of a



commitment and judgment containing a sentence of death by asphyxiation pronounced upon Petitioners by the Superior Court of Pitt County, North Carolina, on June 6th, 1949, as a result of the conviction of the Petitioners of the crime of murder in the first degree; it is denied by Respondent that the Petitioners are unjustly and unlawfully detained and imprisoned; it is denied by Respondent that Negroes had been discriminatively, systematically and arbitrarily excluded from the Grand and Petit Juries of Pitt County; it is denied by Respondent that the confessions of Petitioners admitted in evidence in the trial of this cause in Pitt County were obtained from Petitioners, or either of them, by means of force, coercion, brutality, incessant questioning, or by any other means or methods that rendered said confessions invalid, illegal or unconstitutional, but to the contrary, the Respondent alleges that the Petitioners, and each of them, freely and voluntarily gave confessions showing that they were guilty of the murder [fol. 38] charged in the bill of indictment; the Respondent alleges that the admissibility of said confessions in evidence was passed upon according to the practice and procedure established by the State of North Carolina as controlling in its Courts, and the admission of said confessions in evidence and the ruling of the trial Court thereon cannot now be invalidated, set aside and subjected to collateral attack in a Habeas Corpus proceeding; that the Grand Jury that indicted Petitioners and the Petit Jury that tried Petitioners were both legally and constitutionally drawn, selected, organized and constituted under valid, legal and constitutional jury statutes, and the proceedings, administration and selection of said jurors by the jury officials cannot now be invalidated, set aside and subjected to collateral attack in Habeas Corpus proceedings, and especially since the Petitioners, acting through counsel of their own choice, neglected and refused to properly exercise their rights and remedy of appeal to the Supreme Court of North Carolina according to valid and constitutional rules and laws established by the State of North Carolina for the review of such questions upon appeal; it is admitted by Respondent that Petitioners' statement of case on appeal was stricken out by an order entered by Williams, J., on or about Sep-

tember 29th, 1949, and in this connection, Respondent alleges that Petitioners not only attempted to serve said case on appeal one day after the time allowed by law had expired, but Petitioners never did, at any time, properly serve a statement of case on appeal according to the laws, rules, practice and procedure established by the State of North Carolina for the perfecting of appeals to the Supreme Court of said State; it is admitted by Respondent that Petitioners caused two Petitions to be filed in the Supreme Court of North Carolina seeking a Writ of Certiorari and that the Supreme Court of North Carolina denied said Petitions for the reasons set forth in its opinion; it is admitted by Respondent that Petitioners sought a Writ of Error Coram Nobis and that the same was refused by the Supreme Court of North Carolina for the reasons set forth in the opinion of said Court dated December 14th, [fol. 39] 1949; it is admitted by Respondent that by virtue of a motion filed in the Supreme Court of North Carolina by the Attorney General, the attempted appeal of the Petitioners was dismissed after an examination of the record filed in the case; it is admitted by Respondent that Petitioners caused a Petition for a Writ of Certiorari to be filed in the Supreme Court of the United States, including a record of all of the proceedings in the case and a transcript of all of the evidence in the case, and that on or about May 8th, 1950, the Supreme Court of the United States denied said Petition for a Writ of Certiorari which had been filed by Petitioners; it is admitted by Respondent that Petitioners caused another Petition for a Writ of Error Coram Nobis to be filed in the Supreme Court of North Carolina and that said Petition was denied by said Court for the reasons given in an opinion dated May 24th, 1950; that Paragraph 2 of the Petition consists of allegations stated in the form of some facts, evidence, inferences and conclusions of counsel for Petitioners with an admixture of legal arguments and citations of legal authorities, all commingled together, and Respondent is advised and believes and, therefore, alleges that all allegations as to evidence, inferences and conclusions of counsel, legal arguments and citations of legal authorities should be stricken from said Petition; that except as herein admitted, and as may be admitted by Respondent in his further answer

to the Petition, the allegations of Paragraph 2 of the Petition are untrue and are, therefore, denied.

4. Answering the allegations of Paragraph 4 of the Petition, the Respondent alleges that Petitioners at all times had a full and ample remedy by appeal to the Supreme Court of North Carolina and could have had all questions and objections noted in the trial of the Superior Court of Pitt County reviewed in said Supreme Court, but to the contrary, Petitioners, acting through counsel of their own choice, indifferently, and without just cause or excuse, delayed and failed to perfect said appeal as provided by law; that the allegations of said Paragraph 4 of the Petition are, therefore, untrue and are denied.

5. Answering Paragraph 5 of the Petition, the Respondent admits that no previous application has been made by Petitioners for a Writ of Habeas Corpus; that except as herein admitted, the allegations of Paragraph 5 are untrue and are denied.

Further answering said petition for the purpose of the dismissal of same, and by way of Plea in bar of the relief sought in said petition, the Respondent, J. P. Crawford, Warden of the Central Prison of the State of North Carolina, says and alleges:

1. That the Petitioners were indicted for the crime of murder in the first degree in the Superior Court of Pitt County, North Carolina, for the killing of William Benjamin O'Neal, a taxicab driver; that the crime of murder in the first degree is prohibited by the statute and the laws of the State of North Carolina, and the penalty for said crime, upon a conviction for same, is death by asphyxiation as administered by the Warden of the Central Prison of the State of North Carolina; that the Superior Court of Pitt County is a Court of general jurisdiction, and it is alleged by Respondent that said Superior Court had jurisdiction over the offense charged against Petitioners and had jurisdiction over the persons of the Petitioners, and never at any time lost such jurisdiction during the trial of said Petitioners; that after said bill of indictment had been returned by the Grand Jury of Pitt County, it was made known to the Court that the defendants were charged with a capital offense and were financially unable to provide

counsel for themselves, and the Court thereupon appointed Arthur B. Corey and W. W. Speight, members of the Bar of Pitt County, to advise and represent the Petitioners in the trial of said cause; that the Respondent is advised and believes and so alleges: that the said Arthur B. Corey and W. W. Speight are well educated, trained, experienced and skillful trial lawyers, residing in Pitt County, with a wide knowledge of the customs and attitude of the people of said County and with a wide acquaintance of persons and citizens of the County selected and drawn for jury duty; that the Petitioners were arraigned upon said bill of indictment, and each of the Petitioners entered a plea of "Not Guilty"; that thereafter, the Petitioners were sent to the State Hospital at Goldsboro for study and examination [fol. 41] as to the mental condition and sanity of Petitioners, and this study and examination was made by Dr. I. C. Long, Superintendent of said State Hospital and an expert Psychiatrist; that thereafter, said case was continued until a term of Court held on May 30, 1949, and a report having been filed that Petitioners had sufficient intelligence and sanity to be placed on trial, Petitioners were placed upon trial at said term of Court; that at the April Term of Court, 1949, the Petitioners had employed Herman L. Taylor, a member in good standing of the Wake County Bar, and C. J. Gates, a member in good standing of the Durham County Bar, to represent them in the trial of said cause; that counsel accepted said employment, and this being made known to the Court, an order was entered discharging Arthur B. Corey and W. W. Speight from any further duties as counsel in said cause; that at said term of Criminal Court beginning on May 30th, 1949, and after the Petitioners had previously been arraigned and caused pleas of "Not Guilty" to be entered at a former term of Court, the Petitioners, for the first time, filed a motion to quash the bill of indictment and a challenge to the array of petit jurors; that after holding a hearing at which the Petitioners and the State introduced evidence, the Court overruled or dismissed said motion to quash and challenge to the array of petit jurors; that said cause was duly tried, and the jury, upon which one member of Petitioners' race served, returned a verdict of guilty of murder in the first degree, and the Petitioners were sep-



tenced to death, which penalty is mandatory under the laws of the State of North Carolina upon a conviction for such offense; that said Petitioners, together with said judgment of death, made in writing, were transmitted to the Respondent for the purpose of carrying out said sentence as required by law, and Respondent detains and has custody of Petitioners under said judgment or sentence of death as commanded by the Superior Court of Pitt County and for the purpose of executing and carrying out said judgment as provided by law; that a duly certified copy of the record and proceedings had in the trial of the Petitioners in the Superior Court of Pitt County, including a transcript of the [fol. 42] evidence as transcribed and reported by the official court reporter, and including a copy of the sentence or judgment of death by virtue of which Respondent detains and has custody of Petitioners, is hereto attached and made a part of this Paragraph as if fully set forth herein; that Respondent is advised and believes and so alleges: that said sentence or judgment was pronounced, entered and signed by a Court having jurisdiction to indict and place Petitioners on trial, that Petitioners were convicted after a regular, proper, lawful and constitutional trial was had, and said judgment or sentence pronounced upon Petitioners is valid, legal and constitutional, and such proceedings, trial and judgment are here pleaded in bar of any rights the Petitioners may have to seek the relief demanded in their Petition.

2. That as the Respondent is informed and believes, and as above set forth, Petitioners, after they had been arraigned and entered their pleas to the bill of indictment, filed a motion to quash the bill of indictment in which it was alleged that Negroes had been excluded from service on the Grand Juries of Pitt County in violation of the Fourteenth Amendment, and also entered a challenge to the array of petit jurors for the same reason; that in addition, as Respondent is informed and believes, Petitioners also contended that certain confessions made by them should not have been admitted in evidence over their objections because, as they contended, said confessions had been improperly and illegally secured in violation of the Fourteenth Amendment; that said motion to quash, challenge to the array and objections of Petitioners to the

admission of said confessions were heard and ruled upon by the trial Judge according to the practice, procedure, and laws established by the State of North Carolina, and Respondent is advised and believes and so alleges: that the Superior Court of Pitt County had jurisdiction over the Petitioners and the crime with which they were charged, that in the organization, selection, and constitution of the Grand Jury and Petit Jury and in the admission of said confessions, no violations of the Fourteenth Amendment were committed, and said Superior Court never, at any time, lost jurisdiction of said cause; that said motions and [fol. 43] objections were made, presented, heard and passed upon during the progress of the trial of Petitioners and appear in the record of said trial; that Respondent is informed and believes and so alleges: the State of North Carolina has, by its laws, provided the remedy of appeal in criminal cases, and any person convicted in a criminal case can avail himself of such remedy as a matter of right and have his trial reviewed by the Supreme Court of North Carolina; that the alleged violations of the Fourteenth Amendment asserted by the Petitioners in their motions and objections could have been reviewed by the Supreme Court of North Carolina, but Petitioners, acting through counsel of their own choice, neglected, failed and refused to properly serve a statement of case on appeal as required by the criminal procedure of the State of North Carolina, and as a result, upon motion of the Prosecuting Officer of the District, an order was entered by Williams, J., on the 29th day of September, 1949, striking out Petitioners' statement of case on appeal; that a certified copy of said order is attached hereto and made a part of this Paragraph and Answer; that such failure and neglect on the part of the Petitioners to exercise their right of appeal and to avail themselves of such remedy of review is hereby pleaded in bar of any right the Petitioners may have to maintain this proceeding; that Petitioners were indicted by a Grand Jury composed of persons eligible for such jury service, and Petitioners were convicted by a Petit or trial jury composed of persons eligible for such jury service, including a member of Petitioners' own race, and Respondent is informed and believes that Petitioners cannot now collaterally attack such judgment, proceeding and rulings of the State Court, even

though such rulings should be considered erroneous and thus convert a Habeas Corpus proceeding into a substitute for an appeal or Writ of Error.

3. That after Petitioners, acting through counsel of their own choice, had neglected, failed and refused to perfect their appeal to the Supreme Court of North Carolina in accordance with the procedure provided by said State and applicable to all persons convicted of criminal offenses, the Petitioners caused various proceedings to be instituted [fol. 44] as a substitute and in an attempt to have the same questions reviewed, which said questions, motions and objections could have been reviewed by the method of appeal, as follows:

(a) On September 27, 1949, Petitioners caused a Petition for a Writ of Certiorari to be filed in the Supreme Court of North Carolina, and thereafter, Petitioners caused a supplemental Petition to be filed in the same proceeding; that these Petitions were denied in an opinion of the Supreme Court of North Carolina reported as *State v. Daniels*, 231 N. C. 17, 56 S. E. (2nd) 2; that a certified copy of said proceedings, including the opinion of the Court, is hereto attached and made a part of this Paragraph and Answer.

(b) That thereafter, Petitioners caused a Petition to be filed in the Supreme Court of North Carolina in which they sought permission to file a Petition for a Writ of Error Coram Nobis in the Superior Court of Pitt County; that the State of North Carolina caused an Answer to be filed in this proceeding, and the Supreme Court of North Carolina denied this application or Petition in an opinion reported as *State v. Daniels*, 231 N. C. 241, 56 S. E. (2d) 546; that a certified copy of this proceeding, including the opinion of the Supreme Court, is hereto attached and made a part of this Answer and Paragraph.

(c) Thereafter, the Attorney General of North Carolina caused the record in the case to be docketed and filed a motion in the Supreme Court of North Carolina asking the Court to dismiss the appeal which the Petitioners had neglected and failed to perfect, and upon said motion, the Supreme Court of North Carolina dismissed said appeal and affirmed the judgment of the Superior Court of Pitt County; that the opinion of the Supreme Court of North

Carolina is reported as *State v. Daniels*, 231 N. C. 509, 57 S. E. (2d) 653; that a certified copy of said motion to dismiss said appeal, including the opinion of the Supreme Court of North Carolina, is hereto attached and made a part of this Paragraph and Answer.

(d) That thereafter, the Petitioners caused a Petition for a Writ of Certiorari to be filed in the Supreme Court of [fol. 45] the United States; that a record of said proceedings in the case was duly transmitted to the Supreme Court of the United States by the Clerk of the Supreme Court of North Carolina, and there was also sent to the Supreme Court of the United States a transcript of the evidence and proceedings in the Superior Court of Pitt County, which included Petitioners' motion to quash, challenge to the array and objections of Petitioners to the admission in evidence of the confessions of Petitioners; that the Supreme Court of the United States had before it a record of the entire proceedings in the State Courts, including the evidence, the brief of Petitioners filed in support of their application or Petition for a Writ of Certiorari and brief of the Respondent, State of North Carolina, opposing the Petition; that on the 8th day of May, 1950, the Supreme Court of the United States denied said Petition for Writ of Certiorari; that a copy of all of said proceedings filed in the Supreme Court of the United States wherein Petitioners sought a Writ of Certiorari, including the denial of the aforesaid Petition, as well as the briefs filed therein, are hereto attached and made a part of this Paragraph and Answer.

(e) That thereafter, the Petitioners caused another Petition for Writ of Error Coram Nobis to be filed in the Supreme Court of North Carolina, and the Petition in said proceeding presented the same questions that had been presented to the Supreme Court of the United States, and which had previously been presented to the Supreme Court of North Carolina when Petitioners first applied for a Writ of Error Coram Nobis in the former proceeding; that the State of North Carolina filed an Answer in this proceeding, and the Supreme Court of North Carolina denied said application or Petition for Writ of Error Coram Nobis in an opinion reported as 232 N. C. 196, — S. E. (2d) —; that



a certified copy of said proceeding in which Petitioners sought a Writ of Error Coram Nobis, including the opinion of the Supreme Court of North Carolina, is hereto attached and made a part of this Paragraph and Answer.

That in all of the proceedings above set forth and in their [fol. 46] various Petitions in said proceedings, Petitioners sought to attack the constitution, establishment and organization of the Grand Jury that returned the Bill of Indictment against Petitioners, the Petit Jury panel from which was selected the Jury that tried Petitioners, upon the grounds of racial discrimination in violation of the Fourteenth Amendment; that Petitioners likewise contended that their confessions were unlawfully procured in violation of the Fourteenth Amendment and that they had been deprived of their right of trial by jury because of the procedure in force in the State of North Carolina whereby the trial Judge determines the question of the voluntariness of confessions, and such question is not ultimately passed upon by the jury; that Petitioners filed a transcript showing the proceedings in the trial of the case in the Superior Court of Pitt County, both in the Supreme Court of North Carolina and in the Supreme Court of the United States; that of the above proceedings in the Supreme Court of North Carolina and in the Supreme Court of the United States are here pleaded as grounds for the dismissal of this Habeas Corpus proceeding, in discharge of any Writ of Habeas Corpus issued herein, and in bar of any rights that Petitioners may have to seek relief in this Habeas Corpus proceeding.

4. That as to Petitioners' motion to quash the bill of indictment upon the grounds that they had been deprived of equal protection of the law by discriminatory and arbitrary exclusion of Negroes from the Grand Juries of Pitt County, the Respondent is advised and believes and so alleges: that Petitioners did not file their motion to quash the bill of indictment until long after they had been arraigned and had entered pleas of "Not Guilty"; that Respondent is informed and believes that under these circumstances, the allowance of such a motion was within the discretion of the Court; that irrespective of his discretion, the trial Court held a hearing on the motion and evidence was produced by

the State showing that there had been no systematic, arbitrary and purposeful discrimination against or exclusion of persons of the colored race from service on Grand Juries [fol. 47] and likewise the same was shown as to the service of Negroes on the Petit Juries; that Negroes were drawn on the trial panel and one Negro served on the jury that convicted Petitioners; that the trial judge made findings of fact which are supported by the evidence and such findings of fact, as well as the whole transcript of the evidence and other proceedings in said trial in the Superior Court of Pitt County, are hereby referred to and made a part of this Paragraph and Answer; that Respondent is informed and believes that Petitioners were indicted by a Grand Jury composed of eligible persons for Grand Jury service, and Petitioners were convicted by a jury composed of eligible persons; that Petitioners having failed to have these questions reviewed on appeal to the Supreme Court of North Carolina cannot now collaterally attack said judgment upon such grounds; that even if there were defects in the constitution of said Grand Jury and Petit Jury, then, so far as this proceeding is concerned, such defects are irregularities and did not deprive the Superior Court of Pitt County of jurisdiction, said Court at all times having had jurisdiction over the offense charged against Petitioners as well as the person of each Petitioner, and such lack of capacity or authority to attack said judgment in a Habeas Corpus proceeding is here pleaded by way of dismissal, in discharge of any Writ of Habeas Corpus issued in this proceeding and in bar of any rights of Petitioners to have relief in this proceeding.

3. That as shown by the transcript of the evidence and the proceedings had at the trial of Petitioners, certain confessions of Petitioners were admitted in evidence against them; that according to the law and practice in force in the State of North Carolina, the trial Judge held a hearing and heard evidence from both the State and the Petitioners; that the trial Judge found that said confessions were freely and voluntarily given and admitted said confessions in evidence; that the transcript of evidence and proceedings had on this question are here referred to and made a part of this Paragraph and Answer; that Respondent is informed

and believes that said confessions were properly, legally and constitutionally procured and admitted in evidence, and no constitutional rights of the Petitioners were violated [fol. 48] in this respect; Respondent is informed and believes that the method of determining the voluntariness and admissibility of said confessions is in all respects in compliance with due process of law and other requirements of the Federal Constitution; that as the transcript shows, the trial Judge left it to the jury to determine what weight should be given to said confessions and as to whether or not the jury believed such confessions, as well as the sufficiency of the confessions to prove any matters of fact; that even if said confessions were erroneously admitted in evidence, the Petitioners could have had said error reviewed on appeal to the Supreme Court of North Carolina, which the Petitioners failed to do; that Respondent is informed and believes that Petitioners cannot now have said objections reviewed by means of a Habeas Corpus proceeding; that if the Court erred in such ruling, such erroneous admission in evidence of such confessions did not deprive the Court of jurisdiction, and Petitioners cannot now attack said judgment in a collateral manner and thus convert a Habeas Corpus proceeding into a substitute for an appeal or make use of same as Writ of Error.

6. Respondent, therefore, shows the Court that Petitioners are in his custody and are being detained by him pursuant to said judgment and commitment issued by the Superior Court of Pitt County, a certified copy of which is hereto attached, and Respondent will produce the original of said judgment as transmitted to him by the Clerk of the Superior Court of Pitt County on the hearing of this cause; that for the reasons above alleged, Respondent is informed and believes that said judgment was valid, legal and proper and was pronounced and signed by a Court having jurisdiction of the crime of which Petitioners were charged and tried; that said Court retained jurisdiction at all times and had the legal and constitutional authority to enter the judgment in this cause that is here exhibited; that as Respondent is informed and believes, he is entitled to the custody and is entitled to detain the Petitioners until such time as Petitioners may be dealt with and the judgment

[fol. 49] executed and carried out as provided by the laws of the State of North Carolina which are applicable to all persons regardless of race.

Wherefore, Respondent prays the Court:

1. That the Petition for a Writ of Habeas Corpus heretofore filed in this cause be dismissed.

2. That any Writ of Habeas Corpus that may have been issued or may issue or that may be issued in this cause be denied, dismissed and discharged.

3. That the order of injunction heretofore issued restraining Respondent and putting into effect the judgment or commitment under which the Respondent has custody of and detains the Petitioners be dismissed.

4. That the judgment and commitment under which Respondent holds Petitioners and under which he detains and has custody of Petitioners be declared to be a legal, valid and proper judgment and not subject to any attack in a Habeas Corpus proceeding.

5. That Respondent be authorized to carry out and execute said judgment in accordance with the laws and statutes of the State of North Carolina.

6. For such other and further relief to which Respondent may be entitled, and which may be proper in this proceeding.

Harry McMullan, Attorney General of North Carolina; Ralph Moody, Assistant Attorney General; R.<sup>o</sup> Brookes Peters, General Counsel of the State Highway and Public Works Commission; E. O. Brogden, Jr., Attorney and Member of Staff of State Highway and Public Works Commission, Attorneys for Respondent, J. P. Crawford, Warden of the Central Prison of the State of North Carolina, Raleigh, N. C.

[fol. 50] *Duly sworn to by J. P. Crawford. Jurat omitted in printing.*



STATE OF NORTH CAROLINA,  
Pitt County,  
Greenville Township, ss.:

STATE

vs.

BENNIE DANIELS and LLOYD RAY DANIELS

Before H. L. Jenkins, Justice of the Peace

WARRANT

Criminal Action

L. E. Manning being duly sworn, complains and says, that at and in said County, and Greenville Township on or about the 5th day of February, 1949, Bennie Daniels and Lloyd Ray Daniels did unlawfully, wilfully, feloniously, premeditatedly and deliberately, with malice aforethought, kill and murder William Benjamin O'Neal, against the form of the Statute in such cases made and provided, and contrary to law and against the peace and dignity of the State.

L. E. Manning.

Subscribed and sworn to before me, the 8th day of February, 1949. H. L. Jenkins, J. P.

STATE OF NORTH CAROLINA:

To any Lawful Officer of Pitt County—Greeting:

You are hereby commanded to arrest Bennie Daniels and Lloyd Ray Daniels and them safely keep, so that you have them before me at my office in said County, immediately, to answer the above complaint, and be dealt with as the law directs.

Given under my hand and seal this 8th day of February, 1949.

H. L. Jenkins, Justice of the Peace. (Seal.)

## JUDGMENT

After hearing the evidence in this case, it is adjudged that the defendant — Preliminary Hearing Waived — is guilty.

It is further ordered and adjudged that the defendants give a justified bond in the sum of None Dollars for their appearance at the Superior Court of Pitt County, to be held in Greenville, N. C., on the 28 day of March, 1949, and in default be committed to jail.

H. L. Jenkins, Justice of the Peace. (Seal.)

[fol. 52] Witnesses marked X recognized to appear.

Case tried 12 day of February, 1949.

Bond fixed at \$ None.

(On Back of Warrant): State vs. Bennie Daniels and Lloyd Ray Daniels. Warrant for Murder.

Summons for the State: L. E. Manning, R. W. Tyson, S. B. Dorsey, L. D. Page, M. E. Corbette, S. G. Gibbs, C. T. Manning, Henry Wilkens.

Rec'd the — day of —, 19—.

Exc'd the 9 day of Feb., 1949.

Ruel W. Tyson, Sheriff.

[fol. 53] IN SUPERIOR COURT OF PITT COUNTY

## INDICTMENT

The jurors for the State upon their oath do present, that Bennie Daniels and Lloyd Ray Daniels late of Pitt County, on the 5th day of February, A. D., 1949, with force and arms, at and in the said County, feloniously, wilfully, premeditatedly and deliberately, and of his malice aforethought, did kill and murder William Benjamin O'Neal, contrary to the form and the statute in such case made and provided, and against the peace and dignity of the State.

(S.) Wm. J. Bundy, Solicitor.

(On back of Indictment): No. 3579. State against Bennie Daniels and Lloyd Ray Daniels. Indictment, Murder.

Witnesses: L. E. Manning, S. G. Gibbs X, R. W. Tyson X, M. E. Corbette, S. B. Dorsey, C. T. Manning, L. D. Page, Henry Wilkens.

Those marked X endorsed and sent by the Solicitor, and sworn and examined by me.

W. H. Moore, Jr., Foreman Grand Jury.

X A True Bill.

W. H. Moore, Jr., Foreman Grand Jury.

[fol. 54] IN SUPERIOR COURT OF PITT COUNTY

#### ORGANIZATION OF COURT

Be it remembered that at a Mixed Term of the Superior Court, begun and held for the County of Pitt at the Court-house in the City of Greenville, on the Twelfth Monday after the First Monday in March, 1949, it being May 30, 1949, His Honor Clawson L. Williams, Judge riding the Fifth Judicial District for Spring Term, 1949, present and presiding.

Hon. William J. Bundy, Solicitor of the Fifth Judicial District, present and prosecuting for the State.

Then comes Ruel W. Tyson, Sheriff of Pitt County and returns into Court that in obedience to a writ of Venire Facias heretofore issued to him by the Board of County Commissioners, he has summoned the following good and lawful men to serve as Jurors for the Term, to-wit: Names of jurors (omitted in printing).

[fol. 55] The following jurors of the regular panel were drawn from a hat by a child under 10 years of age and sworn, to-wit: List of jurors (omitted in printing).

[fol. 56] IN SUPERIOR COURT OF PITT COUNTY

[Title omitted]

ORDER OF SPECIAL VENIRE—June 1, 1949

It appearing to the Court that the panel of regular jurors drawn and summoned for this case having been exhausted after the selection of four jurors for the trial of this case,

and that the defendants being charged upon the Bill of Indictment with the capital offense of murder in the first degree, and in order to select a fair and impartial jury to try the case it is necessary that a special venire of one hundred and fifty (150) be had to supplement the regular panel of this term of court from which to select a jury.

Therefore, by consent, it is agreed that a special venire of one hundred and fifty be drawn in this case, and that the Register of Deeds and Clerk ex-officio to the Board of County Commissioners of this County forthwith produce the jury boxes of the County in open court and that there be drawn from Jury Box No. 1, by a child under ten years of age, one hundred and fifty (150) scrolls, the names of the persons on said scrolls to constitute a special venire from which to complete the jury in the trial of this case, and when drawn the said scrolls shall be placed in Jury Box No. 2.

It is further ordered that the Sheriff of this County immediately summon the persons so drawn, who shall be certified to him by the Clerk of this Court in a Writ of Venire Facias, personally to be and appear before the Court at nine-thirty o'clock a.m., on Thursday morning, the 2nd day of June, 1949, then and there to answer on oath touching their fitness and competency to serve as jurors.

And of this Writ make due return.

(S.) Clawson L. Williams, Judge presiding.

[fol. 57] IN SUPERIOR COURT OF PITT COUNTY

[Title omitted]

WRIT OF VENIRE FACIAS

To Ruel W. Tyson, Sheriff of Pitt County—Greeting:

I do hereby certify to you that the persons whose names hereinafter appear, in the list hereto attached and made a part hereof, are those persons drawn as a special venire in this case, pursuant to order of Hon. Clawson L. Williams, on June 1, 1949, and you will further take notice that you are commanded to have the said persons before the Court at the Courthouse in Greenville, on Thursday morning, June 2,



1949, at 9:30 A.M., then and there to answer on oath touching their fitness and competency to serve as jurors in this case.

Herein fail not and of this writ make due return.

(S.) D. T. House, Jr., Clerk, Superior Court.

[fols. 58-59] List of one hundred and fifty names (omitted in printing).

[fols. 60-62] IN SUPERIOR COURT OF PITT COUNTY

[Title omitted]

RETURN TO WRIT OF VENIRE—June 2, 1949

Obedient to the Writ of Venire Facias of the Clerk of Superior Court of Pitt County, I make the following returns. Those persons marked "Served" were summonsed to appear before the Court at the Courthouse in Greenville on June 2, 1949, at 9:30 A. M. Those not marked "Served" were either not found in Pitt County, deceased, or sick, as is shown opposite their names.

List of One Hundred and Fifty Names (omitted in printing).

[fol. 63] The following Jurors from the Special Venire summonsed by Ruel W. Tyson, Sheriff of Pitt County, were drawn from a hat by a child under 10 years of age and sworn, to-wit:

List of Jurors (omitted in printing).

It appearing to the Court and the Court finding that this trial is likely to be protracted. It is therefore ordered that a thirteenth alternate juror be selected.

R. W. King was sworn as an officer of the Jury.

[fol. 64] IN SUPERIOR COURT OF PITT COUNTY

[Title omitted]

ORDER OF ADDITIONAL SPECIAL VENIRE

It appearing to the Court during the progress of this trial and in the selection of the jury that the regular panel of jurors summoned for this term of court and the supplemental panel of special veniremen heretofore summoned from which to select a jury for the trial of this case has been exhausted and the jury not completed, and

It further appearing to the Court that the defendants stand indicted upon a Bill of Indictment duly returned by the Grand Jury of this County of the crime of murder in the first degree, and that in order to have a fair and impartial trial it is necessary that an additional special venire be had to supplement the regular panel and special venire, which are exhausted, from which to select the jury, consisting of thirty-five names.

It is therefore ordered that an additional special venire of thirty-five be drawn in this case to supplement the panel of regular jurors and the special venire heretofore exhausted for the purpose of selecting a jury in order that the defendant may have a fair and impartial trial, and to that end

It is ordered that the Register of Deeds and ex-officio clerk to the Board of County Commissioners forthwith produce in open court the jury boxes of the County, and that there be drawn from Jury Box No. 1 thirty-five scrolls by a child under ten years of age, the names of the persons on said scrolls to constitute a special venire from which to complete the jury in the trial of this case, and when drawn said scrolls shall be placed in Jury Box No. 2.

It is further ordered that the Clerk of this Court issue a Writ of Venire Facias to the Sheriff of this County commanding him that the persons so drawn be and appear before the undersigned Judge presiding over the Court at eight-thirty (8:30) p.m. Thursday, the 2nd day of June, [fol. 65] 1949, then and there to answer on oath touching their fitness and competency to serve as jurors in this case.

And of this Writ forthwith make due return.

(S.) Clawson L. Williams, Judge Presiding.

[fol. 66] IN SUPERIOR COURT OF PITT COUNTY

[Title omitted]

WRIT OF VENIRE FACIAS

To Ruel W. Tyson, Sheriff of Pitt County—Greeting:

I do hereby certify to you that the persons whose names hereinafter appear, in the list hereto attached and made a part hereof, are those persons drawn as a supplementary special venire of 35 in this case, pursuant to order of Hon. Clawson L. Williams, on June 2, 1949, and you will further take notice that you are commanded to have the said persons before the Court at the Courthouse in Greenville, on Thursday evening, June 2, 1949, at 8:30 P.M., then and there to answer on oath touching their fitness and competency to serve as jurors in this case.

Herein fail not and of this writ make due return.

(S. P. D. T. House, Jr., Clerk Superior Court.)

[fol. 67] 2nd Special Venire—List of Thirty-five Names (omitted in printing).

[fol. 68] IN SUPERIOR COURT OF PITT COUNTY

RETURN TO WRIT OF VENIRE

Obedient to the Writ of Venire Facias of the Clerk of Superior Court of Pitt County, I make the following returns. Those persons marked "Served" were summonsed to appear before the Court at the Courthouse in Greenville on June 2, 1949, at 8:30 P.M. Those not marked "Served" were either not found in Pitt County, deceased, or sick, as is shown opposite their names.

List of Thirty-five Names (omitted in printing).

[fol. 69] The following Jurors from the supplementary Special Venire summonsed by Ruel W. Tyson, Sheriff of Pitt County, was drawn from a hat by a child under 10 years of age and was sworn, to-wit:

List of jurors (omitted in printing).

[fol. 70] IN SUPERIOR COURT OF PITT COUNTY

[Title omitted]

ORDER

In the above entitled case it appearing to the Court that the present term of Superior Court will expire before completion of the trial of this case it is ordered that the present term of the Superior Court be and the same hereby is continued until the trial of this case is completed and disposed of.

(S.) Clawson L. Williams, Judge Presiding.

IN SUPERIOR COURT OF PITT COUNTY

[Title omitted]

JURY VERDICT—June 6, 1949

Jury return and say for their verdict that the Defendant, Bennie Daniels, is guilty of murder in the 1st degree as charged in the bill of indictment, and that the Defendant, Lloyd Ray Daniels, is guilty of murder in the 1st degree as charged in the bill of indictment.

[fol. 71] IN SUPERIOR COURT OF PITT COUNTY

[Title omitted]

JUDGMENT

The prisoner, Bennie Daniels, having been convicted of murder in the first degree by verdict of the Jury duly returned at this term of the Superior Court of Pitt County, North Carolina,

It is, therefore, ordered and adjudged that the said Bennie Daniels be, and he is hereby sentenced to death by asphyxiation, and the Sheriff of Pitt County, North Carolina, in whose custody the said defendant now is, forthwith convey such prisoner, Bennie Daniels, to the State Peni-



tertiary at Raleigh, North Carolina, and deliver said prisoner, Bennie Daniels, to the warden of the State's Penitentiary, who, the said Warden, on Friday the 15th day of July 1949, shall cause the said prisoner, Bennie Daniels, to inhale lethal gas of sufficient quantity and volume to cause the death of said prisoner, Bennie Daniels, which administration and inhalation of such lethal gas shall be continued until life is extinguished and the said prisoner, Bennie Daniels, is dead.

May God have mercy upon his soul.

(S.) Clawson L. Williams, Judge Presiding.

[fol. 72]

IN SUPERIOR COURT OF PITT COUNTY

[Title omitted]

APPEAL ENTRIES

Verdict: Guilty of murder in the first degree.

Upon the coming in of the verdict the defendant, Bennie Daniels, moved to set aside the verdict for that the same is contrary to the evidence, and moved for a new trial.

Motion denied and said defendant excepted.

Defendant moved for a new trial for errors committed by the Court in the reception of incompetent testimony and in the rejection of competent testimony and for errors in the Charge as given to the Jury.

Motion denied: Defendant again excepted.

The Court then pronounced Judgment.

To the foregoing judgment and sentence of the Court the defendant excepted and appeals therefrom to the Supreme Court. Further notice waived. 60 days allowed defendant to make and serve statement of case on appeal; 45 days thereafter allowed the State to make and serve amendments thereto or statement of counter-case on appeal.

On presentation of the requisite affidavit and certificate, as provided for in the statutes of this State, the defendant is permitted to appeal in forma pauperis, as set out in order this day signed.

[fol. 73] IN SUPERIOR COURT OF PITT COUNTY

[Title omitted]

JUDGMENT

The prisoner, Lloyd Ray Daniels, having been convicted of murder in the first degree by verdict of the Jury duly returned at this term of the Superior Court of Pitt County, North Carolina.

It is, therefore, ordered and adjudged that the said Lloyd Ray Daniels be, and he is hereby sentenced to death by asphyxiation, and the Sheriff of Pitt County, North Carolina, in whose custody the said defendant now is, forthwith convey such prisoner, Lloyd Ray Daniels, to the State Penitentiary at Raleigh, North Carolina, and deliver said prisoner, Lloyd Ray Daniels, to the Warden of the State's Penitentiary, who, the said Warden, on the Friday 15th day of July 1949, shall cause the said prisoner, Lloyd Ray Daniels, to inhale lethal gas of sufficient quantity and volume to cause the death of said prisoner, Lloyd Ray Daniels, which administration and inhalation of such lethal gas shall be continued until life is extinguished and the said prisoner, Lloyd Ray Daniels, is dead.

May God have mercy upon his soul.

(S.) Clawson L. Williams, Judge Presiding.

[fols. 74-77] IN SUPERIOR COURT OF PITT COUNTY

[Title omitted]

APPEAL ENTRIES

Verdict: Guilty of murder in the first degree.

Upon the coming in of the verdict the defendant, Lloyd Ray Daniels, moved to set aside the verdict for that the same is contrary to the evidence, and moved for a new trial.

Motion denied and said defendant excepted.

Defendant moved for a new trial for errors committed by the Court in the reception of incompetent testimony and in

the rejection of competent testimony and for errors in the Charge as given to the Jury.

Motion denied. Defendant again excepted.

The Court then pronounced Judgment.

To the foregoing judgment and sentence of the Court the defendant excepted and appeals therefrom to the Supreme Court. Further notice waived. 60 days allowed defendant to make and serve statement of case on appeal; 45 days thereafter allowed the State to make and serve amendments thereto or statement of counter-case on appeal.

On presentation of the requisite affidavit and certificate, as provided for in the statutes of this State, the defendant is permitted to appeal in forma pauperis, as set out in order this day signed.

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[fol. 78] Clerk's Certificate to foregoing transcript omitted in printing.

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[fol. 79] IN SUPERIOR COURT OF PITT COUNTY

[Title omitted]

ORDER ALLOWING MOTION TO STRIKE DEFENDANTS' STATEMENT OF CASE ON APPEAL, ETC.—October 1, 1949

This cause coming on to be heard, and being heard by consent on September 29, 1949, before the undersigned Judge of the Superior Court, at Kinston, North Carolina, upon motion of Wm. J. Bundy, Solicitor Fifth Judicial District, to strike out defendants' statement of case on appeal for failure of defendants to make up and serve statement of case on appeal within time fixed by the Court, the State being represented by Wm. J. Bundy, Solicitor Fifth Judicial District, and the defendants by Herman L. Taylor and C. J. Gates, the Court finds the following facts:

The above entitled case was tried before the undersigned Judge of the Superior Court at the regular term of the Superior Court of Pitt County beginning Monday, May 30, 1949. During said week of the trial of this case, it appearing to the Court that said term would expire before the comple-

tion of the trial of this case, an order was entered that said term be and the same was thereby continued until this case was completed and disposed of.

From verdict of guilty of murder in the first degree as to both defendants and judgment thereupon of death as provided by law the defendants gave notice of appeal and the following appeal entries were made:

"Notice of appeal given in open Court; Further notice waived, 60 days allowed defendants to make up and serve [fol. 80] statement of case on appeal 45 days thereafter allowed the State to make amendments thereto or statement of counter-case on appeal."

— This case was completed and disposed of, and Court adjourned on June 6, 1949.

Statement of case on appeal was left in the office of the Solicitor of the Fifth Judicial District with the Solicitor's secretary, by the attorneys for the defendants on August 6, 1949, and a receipt taken from said secretary, in the absence of the Solicitor, as follows:

"Statement of case on appeal accepted by me this 6 day of August, 1949.

Wm. J. Bandy, by (S.) Mrs. M. H. Fields."

There was no extension or waiver of time within which to make up and serve statement of case on appeal other than contained in the appeal entries, and none requested.

The Solicitor, in serving amendments or exceptions to the defendants' statement of case on appeal, same being served on Herman L. Taylor, one of the attorneys for the defendants, by the Sheriff of Bertie County, on September 5, 1949, made reservations of rights as follows:

"The undersigned Solicitor of the Fifth Judicial District, not waiving any rights, and specifically reserving and now reasserting exception by the State to the failure of the defendants to serve Statement of Case on Appeal within the time fixed by the Court, and renewing its motion to strike the said Statement of Case on Appeal from the record, objects to the Statement of Case on Appeal as left at the Solicitor's office and offers the following exceptions or amendments thereto:"



[fol. 81] Written motion to strike out defendants' statement of case on appeal, for failure by the defendants to make up and serve statement of case on appeal within the time fixed by the Court was filed by the Solicitor, and served on Herman L. Taylor, one of the attorneys for the defendants, by the Sheriff of Wake County, on September 16, 1949.

The defendants, through their attorneys, Herman L. Taylor and C. J. Gates, admit that statement of case on appeal was left in the Solicitor's office with his secretary on August 6, 1949, and that same was not within the time of 60 days fixed by the Court.

The defendants' said statement of case on appeal, left in the Solicitor's office on August 6, 1949, as aforesaid, was not served within the 60 days fixed by the Court for the defendants to make up and serve statement of case on appeal.

It is agreed that order ruling upon said motion may be signed in or out of Lenoir County, and Fifth Judicial District.

It is, therefore, ordered that the motion of the Solicitor for the State to strike out the defendants' statement of case on appeal be and the same is hereby allowed; and said statement of case on appeal is hereby stricken out.

This the 1st day of October, 1949.

Clawson L. Williams, Judge Superior Court.

To the foregoing the defendants object and except and appeal to the Supreme Court.

Clawson L. Williams, Judge Superior Court.

[fol. 82] IN SUPREME COURT OF NORTH CAROLINA

STATE

VS.

BENNIE DANIELS and LLOYD RAY DANIELS

PETITION FOR WRIT OF CERTIORARI—Filed September 27, 1949

Bennie Daniels and Lloyd Ray Daniels, petitioners, respectfully show unto the court:

1. That at the March, 1949 Term of the Superior Court of Pitt County, North Carolina, that petitioners were indicted for the crime of first-degree murder.

2. That at the May 30, 1949 Term of said court petitioners were tried upon said bill of indictment and convicted of the capital crime of first-degree murder without recommendation of mercy.

3. That from the judgment of death pronounced by his Honor Clawson L. Williams, Judge Presiding, petitioners, with the allowance of the Court appealed in forma pauperis to the Supreme Court of North Carolina.

4. That the said May 30, 1949 Term of said court, at which petitioners were tried and convicted, was duly convened on the said 30th day of May, 1949, and the judgment of the Court was pronounced on June 6, 1949.

5. That the defendants were allowed sixty (60) days from the date of judgment in which to make out and serve case on appeal upon the Solicitor of the Fifth Judicial District, and the Solicitor was allowed thirty (30) days after such service to serve counter-case or exceptions thereto.

6. That some forty-five (45) or fifty (50) days elapsed before the court reporter attendant upon the said May 30, 1949 Term of the aforesaid court, at which petitioners were tried and convicted, due to her attendance at and upon other courts, delivered into the hands of the attorneys for petitioners the full and complete record of the proceedings had [fol. 83] in said trial.

7. That the record in the cause covers some four (4) volumes consisting of some five or six hundred pages.

8. That counsel for petitioners, with all of the diligent efforts they could bring to bear, being under the pressure of

other cases, both before this Court and pending in other inferior courts, as well as being retarded in the effort by the lateness of receipt of the complete record in the cause from the Court Stenographer, as aforementioned, served statement of case on appeal upon the Solicitor on the 6th day of August, 1949; that within thirty (30) days thereafter, the Solicitor filed some 122 exceptions to the case on appeal, in addition to a motion to strike same; that because of the filing of said exceptions and motion, it will be necessary for counsel for defendants and the Solicitor to meet with the Presiding Judge for a ruling on said exceptions and motion; that the aforementioned bearing will carry the settlement in this cause well beyond the date on which, under the rules of this Court, said cause should be docketed.

9. That cases from the Fifth Judicial District must be docketed in this Court on Tuesday, September 27, 1949.

10. That the inability to docket said cause within the time prescribed is not due to any lack of diligence or good faith on the part of and of the parties herein involved, but to the reasons previously set out.

11. That petitioner has caused to be docketed in the office of the Clerk of the Supreme Court of North Carolina contemporaneously with the filing of this petition the record prepared in this case as the same appears on the record in the office of the Clerk of Superior Court of Pitt County, North Carolina, properly certified to by said clerk.

12. That petitioner has a meritorious appeal, based upon prejudicial errors committed by the Court during the course of his trial, in particular; (1) in denying petitioner's motion challenging the array of petit jurors, timely lodged, upon the ground of systematic discrimination against, and disproportionate representation of, Negroes in the selection of petit juries and jurors in Pitt County, solely and wholly [Vol. 84] on the basis of race or color, your petitioner being of the Negro race; and (2) in admitting into evidence, over petitioner's objection, confessions which the record shows were extorted through fear and were involuntarily made.

Wherefore, petitioners pray that in order that they may be protected, the Court issue to the Clerk of the Superior Court of Pitt County, North Carolina, a writ of certiorari, to the end that the record and the case on appeal in its en-

to be certified to the Supreme Court of North Carolina, and that this cause be docketed and set by the Court for hearing at the end of the call of the calendar for the hearing of appeals from some other Judicial District other than the Fifth Judicial District.

(S.) Herman L. Taylor, J. Giles, Attorneys for Petitioners.

*Duly sworn to by Bernie Daniels and Lloyd Roy Daniels.  
Jurats omitted in printing.*

Proof of Service of Notice, Petition and Record (omitted in printing).

[fol. 85] IN SUPREME COURT OF NORTH CAROLINA

[Title omitted]

SUPPLEMENT TO PETITION FOR WRIT OF CERTIORARI—October 10, 1949

Now come Bennie Daniels and Lloyd Ray Daniels, petitioners, through their attorneys, Herman L. Taylor and C. J. Gates, and respectfully show unto the Court:

1. That on the 27th day of September, 1949, petitioners filed in this Court a petition for writ of certiorari, praying the Court that they be allowed to docket the appeal which they duly noted at the May 30, 1949 term of the Superior Court of Pitt County, from a judgment and sentence of death for first-degree murder, at a time other than set for the docketing of appeals from the Fifth Judicial District, upon the ground that as the case on appeal in their cause had not been settled, they could not docket said case as required by the rules of this Court.

2. That in the said petition for certiorari, petitioners set out in paragraph eight thereof that an additional factor which precluded the timely docketing of their appeal was the filing by the Solicitor of a motion to strike the statement of case on appeal, in addition to numerous exceptions thereto, the hearing on which was set for a time subsequent to the day on which this appeal should have been docketed under the rules of this Court.



3. That on Thursday, September 29, 1949, a hearing was held in the Superior Court of Lenoir County before the Honorable Clawson L. Williams, Judge, who presided over the trial of this cause, on the motion of the Solicitor to strike defendants' statement of case on appeal, for that the same was not served within the time set by the order of the court, entered on the day the appeal was noted, but was one day late, to wit, defendants had sixty days from June 6th in which to prepare and serve the case on appeal, and said [fol. 86] service was attempted on August 6th.

4. That His Honor Clawson L. Williams, on the 1st day of October, 1949, issued an order allowing the motion of the Solicitor to strike defendants' statement of case on appeal and ordered same to be stricken.

5. That a detailed affidavit of one of counsel for defendants, attached hereto and prayed to be made a part hereof, sets out that personal service of the statement of case on appeal was not had and could not be had on the Solicitor of the Fifth Judicial District on the day on which time for serving case on appeal expired, for that the said Solicitor was neither in his office nor at home, but was out of town and was not expected back before three days after the deadline for serving case on appeal; that counsel for defendants did not know of the whereabouts of the Solicitor or how to contact him with respect to serving case on appeal.

6. That defendants' failure to perfect their appeal, as set out in the affidavit of counsel, was not and is not due to any laches on the part of them or their counsel.

7. That the trial Judge having allowed the striking of defendants' statement of case on appeal, petitioners have no other remedy whereby their cause may be brought before this Court except by the granting of the writ herein prayed for.

8. That as specifically pointed out in the petition filed in this Court on the 27th day of September, 1949, to which this petition is a supplement, petitioners have a meritorious appeal, based upon prejudicial errors committed by the court during the trial of their cause.

Wherefore, petitioners pray the Court that in order that they may be fully protected in their life and limbs that the writ herein prayed for be allowed and that they be given

leave to bring their said cause before this Court upon certiorari.

This 10th day of October, 1949.

Bennie Daniels & Lloyd Ray Daniels. By (S.) Herman L. Taylor, Attorney for Petitioners.

[fol. 87] *Duly sworn, to by Herman L. Taylor. Jurat omitted in printing.*

[fol. 88]

#### AFFIDAVIT

Herman L. Taylor, being first duly sworn, deposes and says: that he is a practicing attorney in the courts of the State of North Carolina; that he is one of the counsel of record for the defendants in the above entitled matter; that as such he has been in charge of the preparation of defendants' case on appeal, in particular, the preparation and service of statement of case on appeal in the above entitled matter;

That on the 6th day of June, 1949, a judgment of death by asphyxiation was rendered against the defendants, upon a verdict of guilty of first-degree murder; that from said judgment defendants noted an appeal to this Court and were allowed sixty (60) days in which to make out and serve statement of case on appeal upon the solicitor for the Fifth Judicial District; that some fifty (50) or fifty-one (51) days, out of the sixty (60) days allowed defendants in which to prepare statement of case on appeal, passed before counsel for defendants received the full and complete record in this cause; that the record in this cause comprises some four volumes, consisting of some 500 or more pages; that approximately one month passed before counsel for defendants received even the first volume of said record, consisting of some 300 or more pages, as is evidenced by a letter of the stenographer attendant upon the term of court at which defendants were convicted and sentenced, a copy of which letter is hereto attached;

That despite the delay in receipt of the record in this cause, counsel for defendants made all diligent efforts to

prepare statement of case on appeal within the time prescribed by the order of the court; that although the last volume of the record on appeal was received only about [fol. 89] one week prior to the expiration of the time for service of statement of case on appeal, counsel for defendants, by the exertion of diligent and painstaking efforts, completed preparation of the said statement of case on appeal in the afternoon of Thursday, August 4th; one day prior to the deadline; that on the morning of Friday, August 5, 1949, the last day on which service of statement of case on appeal could have been made, under the order of the court setting time for service of statement of case on appeal, he, Herman L. Taylor, telephoned the office of the Honorable William J. Bundy, Solicitor, in Greenville, North Carolina, from Fayetteville, North Carolina, where he was engaged in another matter, attempting to contact him with respect to service of case on appeal in this matter; that upon being told by the telephone operator that the Solicitor was not in his office, he talked to Mrs. M. W. Fields, secretary in the office of the Solicitor; that the said Mrs. M. W. Fields stated to him that the Solicitor was not in his office, was not at home, that he was out of town and could not be reached until he returned to his office on Monday morning, August 8th; that in default of being able to contact the Solicitor in person, on Saturday morning, August 6th, he left a copy of the statement of case on appeal at the office of the Solicitor with his secretary and received in return a signed statement of acceptance of said statement of case on appeal by the said Mrs. M. W. Fields, on behalf of the Solicitor, a copy of which acceptance is attached hereto;

That at the hearing before His Honor Clawson L. Williams, held by agreement, in Kinston, North Carolina, on Thursday, September 29th, the Honorable Solicitor admitted that he had forgotten that service of statement of case on appeal in the above entitled matter was due to be made during the week of August 1st, and further admitted that he and his family were at a beach on the morning of Friday, August 5th, when counsel for defendant attempted to contact him by telephone and that he did

not return to Greenville until Sunday evening, August 7th, and to his office until Monday, August 8th.

(S.) Herman L. Taylor, Affiant.

Subscribed and sworn to before me this 10th day of October, 1949. Hellon F. Bray, Notary Public,

[fols. 90-91]

Goldsboro, N. C., July 2nd, 1949.

Mr. Herman L. Taylor, Raleigh, N. C.

Dear Sir:

Re: State vs. Bennie Daniels and Lloyd Ray Daniels.

I am in receipt of your letter in regard to transcript in the above case and am today sending you 305 pages of same. I have been in court almost every day since the case was tried and have been working on the evidence nights and as it is so long I am afraid you will not have time to get it up if I wait until I finish it. I hope to finish the transcript by the last of next week but in case I do not I will send you another volume and let you have it all at the very earliest possible moment.

Very truly yours, (S.) Kate Wade, Box 360, Goldsboro, North Carolina.

[fols. 92-101] OPINION DENYING PETITION FOR CERTIORARI REPORTED 231 N.C. 17, 36 S.E. 2d 2 (omitted in printing)

[fol. 102] IN SUPREME COURT OF NORTH CAROLINA

[Title omitted]

PETITION FOR PERMISSION TO FILE PETITION FOR WRIT OF ERROR CORAM NOBIS IN SUPERIOR COURT OF PITT COUNTY

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the State of North Carolina.

Now come Bennie Daniels and Lloyd Ray Daniels petitioners, and respectfully show unto the Court:

1. That at the March, 1949 Term of the Superior Court of Pitt County, petitioners were indicted for the crime of first-degree murder.



2. That at the May 30, 1949 Term of said Court petitioners were tried upon said bill of indictment and convicted of the capital crime of first-degree murder without recommendation of mercy.

3. That upon the verdict of the jury His Honor Clawson L. Williams, Judge Presiding, pronounced a judgment of death against petitioners; that from such judgment and sentence petitioners, with the allowance of the court, appealed in forma pauperis to the Supreme Court of North Carolina.

4. That on September 29, 1949, His Honor Clawson L. Williams, upon motion by the Solicitor, entered an order striking petitioner's statement of case on appeal, for that the same was not filed within the time set out by the Court in the appeal entries.

5. That on September 27, 1949 petitioners filed before this Court a petition for writ of certiorari, and on October 11, 1949, a supplementary petition for writ of certiorari, praying the court to consider and entertain their cause upon said writ.

6. That on November 2, 1949, this Honorable Court handed down an opinion in which petitioners' application for writ of certiorari was denied.

7. That your petitioners are in this petition seeking of this Honorable Court, as the sole legal remedy remaining [fol. 103] to them, leave to petition the Superior Court of Pitt County for a writ of error coram nobis, to the end that the merits of their appeal may be considered.

8. That petitioners strongly urge upon this Court that they have a meritorious appeal, well founded in law and fact, based upon errors committed by the trial court during the course of their trial, in particular in (1) denying petitioners' motion challenging the array of petit jurors, timely lodged, upon the ground of systematic discrimination against Negroes in the selection of petit juries and jurors in Pitt County, solely and wholly on the basis of race and/or color, your petitioners being of the Negro race, and (2) admitting into evidence, over petitioners' objection alleged confessions which the record shows were extorted through fear and involuntarily made, whereby your petitioners were denied the equal protection of the laws and are about to

be deprived of their lives without due process of law, both in contravention of the Constitution and laws of the State of North Carolina, and the Constitution and laws of the United States.

9. That the full record in this cause will show, with respect to petitioners' objection to the trial court's admitting into evidence their alleged confessions, that petitioners were taken in the dead of night by police officers from among their relatives and friends, held incommunicado and threatened and questioned for a considerable period of time by relays of police officers, en route to and in jail in Williamston, North Carolina, where they were taken after their capture, and it was under these circumstances, which are more fully set out in the record, that the alleged voluntary confessions were made; that your petitioners averred to the trial court, and do now aver to this Honorable Court, that such statements made by them in the nature of confessions of guilt of the crime with which they were charged, were made involuntarily, and extorted through fear.

10. That your petitioners are two ignorant, abject Negro youths, both of about 18 years of age, one of whom has never been privileged to go to school, and the other having gone only to the second grade in school; that all of their [fol. 104] lives have been spent in and about Pitt County with their parents tenant farming.

11. That petitioners pray the court that they be allowed to adopt the record and proceedings which were before this Court upon their petition for writ of certiorari, as a part of this petition, if the same be necessary to put their cause more fully before this court upon this petition.

12. That your petitioners are, contemporaneously with the filing of this petition before this Court, giving notice of the filing of such petition, together with a copy of the same, to the Honorable Harry McMullan, Attorney General, and the Honorable William J. Bundy, Solicitor for the Fifth Judicial District.

Wherefore, petitioners pray this Honorable Court that in the exercise of its supervisory powers and control over the inferior courts of this state, that they be given leave to apply to the Superior Court of Pitt County for a writ of

error coram nobis, so that the errors of which they complain may be inquired into and they thereby be more fully protected in their life and limbs.

(S.) Bennie Daniels, Lloyd Ray Daniels.

[fol. 103] IN SUPREME COURT OF NORTH CAROLINA

[Title omitted]

ANSWER TO PETITION

The Attorney General, answering the Petition for permission to file Petition for Writ of Error Coram Nobis in the Superior Court of Pitt County, for his Answer, says:

1. The allegations contained in Paragraphs 1, 2, 3, 4, 5 and 6 of the Petition are admitted.

2. Answering the allegations contained in Paragraph 7, it is admitted that petitioners are seeking the permission of this Court to file a petition in the Superior Court of Pitt County for a Writ of Error Coram Nobis; it is denied, however, that the petitioners are entitled to any such remedy or that the petitioners occupy such a status as entitles them to seek such a remedy.

3. The allegations contained in Paragraph 8 are denied.

4. The allegations contained in Paragraph 9 are denied.

5. Answering the allegations contained in Paragraph 10, the Attorney General alleges that he has not sufficient knowledge or information to form a belief as to the truth of said allegations and, therefore, denies the same.

6. Answering the allegations contained in Paragraph 11, the Attorney General alleges that he has no objection to an adoption of the record and proceedings which were before this Court upon Petition for Certiorari, including the evidence, charge of the Court, motion to quash, and findings of fact and order entered thereon. It is alleged that the complete record of all the proceedings had in the Superior Court of Pitt County should be adopted for the [fol. 106] information of this Court upon this Petition.

7. Answering the allegations contained in Paragraph 12, it is admitted that notice was served on the Attorney General, and it is not denied that notice has been served upon the Solicitor of the Fifth Judicial District; the remaining allegations of said paragraph are untrue and are denied.

Further answering said Petition, by way of plea in bar of any relief sought by the petitioners in this cause, the Attorney General alleges:

1. That the petitioners were convicted of the crime of first degree murder in the Superior Court of Pitt County at the March Term, 1949, of said Court; that sentence was duly pronounced against both petitioners according to law; that petitioners caused notice of appeal to the Supreme Court of North Carolina to be entered in said case through their counsel, and the petitioners were given sufficient time in which to prepare and serve their statement of case on appeal to the Supreme Court.

2. That due to the laches and negligence on the part of counsel for the petitioners, said appeal was never perfected because counsel for petitioners failed to serve statement of case on appeal in apt time as it was their duty to do, and the judge before whom the petitioners were tried entered an order striking out petitioners' statement of case on appeal for such reason; that all of these facts and matters were presented before this Court on an application for Certiorari filed in this Court, and the facts are recited in the opinion issued by this Court dismissing such application and Petition for Writ of Certiorari; that said opinion is hereby referred to and made a part of this Further Answer.

3. That when the petitioners were tried before the Superior Court of Pitt County, at the March Term, 1949, counsel for the petitioners filed a motion to quash the bill of indictment and challenged the array of petit jurors upon the grounds that members of petitioners' race had been systematically and systematically excluded from jury service in said County, as will appear in said written motion and the record in evidence in said cause; that during said trial, as will appear from the evidence, the State introduced and used certain confessions made by the petitioners, and each of them, which appear on p. 273 of the record of



the evidence and p. 276 of said record, the same being State's Exhibits 8 and 9; that other evidence was offered showing that these petitioners made confessions as to their guilt, as will appear in the record of the evidence; that on the motion to quash on the grounds of race exclusion as to jury duty, the trial Court heard evidence, considered the matter fully and made findings of fact in great detail, and from said findings of fact, the Court ordered and adjudged that the motion to quash the bill of indictment and the challenge to the array of jurors be overruled; that said findings of fact and order of the Court are referred to and made a part of this Further Answer; that as to the competency of the confession of the petitioners, the Court heard evidence and duly considered the question according to the practice in this jurisdiction and overruled the petitioners' objections and admitted said confessions, all of which appears in the record of the evidence, elicited before the trial Court and jury.

4. That as the Attorney General is informed and believes and so alleges, the matters and things upon which the petitioners now seek redress relate to said motion to quash for jury discrimination and the overruling of the Court thereon and also relate to the confessions made by the petitioners and the ruling of the Court on said confessions. It is alleged, therefore, that these matters were brought to the attention of the Court, were adjudicated and passed upon according to the merits of same and both upon facts and law and that the proper redress or remedy of the petitioners, if said rulings were erroneous, was an appeal to the Supreme Court of North Carolina. It is alleged that the matters and things now set up by petitioners as a basis or grounds for [fol. 108] permission to file a Petition for Writ of Error Coram Nobis have already been brought to the attention of the Court by counsel for the petitioners, have been adjudicated and passed upon, and petitioners cannot now assert any alleged error with respect thereto as grounds for seeking the writ herein requested; that no duress, fraud or mistake of fact has been committed which is of such a nature as will give this Court jurisdiction or authority to issue the writ herein sought.

Wherefore, having fully answered, the Attorney General prays the Court that the Petition or application of the petitioners herein be dismissed.

\_\_\_\_\_, Attorney General of North Carolina.  
\_\_\_\_\_, Assistant Attorney General.

*Duly sworn to by Ralph Moody. Jurat omitted in printing.*

[fols. 109-113] ARGUMENT (omitted in printing)

[fol. 114] IN SUPREME COURT OF NORTH CAROLINA

[Title omitted]

#### ORDER DENYING PETITION

PER CURIAM: <sup>5</sup>

The defendants were tried at March Term, 1949, of the Superior Court of Pitt County, convicted of first degree murder, the jury not recommending mercy, were sentenced to death, and appealed. Counsel for defendants, having failed to serve case on appeal within the time allowed, sought by *certiorari* to have the appeal sent up. *Certiorari* was denied, defendants not having shown sufficient grounds therefor under the rules and practice of the Court. *State v. Daniels*, 231 N. C. 17; *In re Taylor*, 230 N. C. 666; *In re Taylor*, 229 N. C. 297, 49 S. E. (2d) 749, q. n.

Counsel for petitioners were advised, however, that petition might be filed here for permission to apply to the Superior Court of Pitt County, where the cause was tried, for a writ of error *coram nobis*, through which, if allowed there, they might be heard on the main features on which they asked for relief, which included matters *dehors* the record, and that appeal would lie to the Supreme Court in the event of its unfavorable action. *State v. Daniels*, *supra*; *In re Taylor* (230 NC) *supra*; *In re Taylor* (229 NC) *supra*.

The defendants now file a petition for permission to apply to the Superior Court for such a writ. Their petition does

not make a *prima facie* showing of substance which is necessary to bring themselves within the purview of the writ. Citations, *supra*.

The petition is insufficient to justify the Court in issuing the writ and instigating the incident procedure in the court below. State v. Daniels, *supra*; *In re Taylor*, (229 NC) *supra*.

The petition is, therefore, denied.

[fol. 115] IN SUPREME COURT OF NORTH CAROLINA

[Title omitted]

MOTION TO DOCKET AND DISMISS UNDER RULE 17

#### Statement

This is a criminal action tried before his Honor, Clawson L. Williams, Judge, and a jury at the May Term, 1949, of the Superior Court of Pitt County.

The defendants, Bennie Daniels and Lloyd Ray Daniels, were tried on a bill of indictment charging them with murder in the first degree, and upon such trial, the jury returned a verdict of guilty of murder in the first degree; and from judgment pronounced upon the verdict, the defendants, and each of them, gave notice of appeal to the Supreme Court of North Carolina.

On October 1st, 1949, Judge Williams heard this matter upon motion to strike out the defendants' statement of case on appeal for that the defendants had failed to make up and serve the same within the time fixed by the Court. It appeared that the attempted service of the case on appeal was not within the sixty (60) days fixed by the Court; that thereafter, the defendants filed their petitions for certiorari in the Supreme Court of North Carolina, such filing having been made on the 10th day of October, 1949, and the record [fol. 116] proper in said case was attached and made a party of the petitions for certiorari, as will appear in the office of the Clerk of the Supreme Court.

On November 2nd, 1949, the Supreme Court filed its opinion dismissing defendants' petition for certiorari, as

will appear and as reported in 231 N. C. 17; that thereafter, the defendants filed a petition or application in the Supreme Court for permission to apply to the Superior Court for a writ of error coram nobis; that said application has been refused in an opinion of the Supreme Court filed on December 14th, 1949; that the entries of appeal made by defendants are still outstanding on the Court docket and have not been acted upon or dismissed; that since said entries of appeal have been entered, no case on appeal was or has been docketed in the Supreme Court. The transcript of the record proper in this case heretofore filed in the office of the Clerk of the Supreme Court is made a part of this motion.

### Motion

The defendant having failed to perfect his appeal in the time required by law, and having failed to file a proper case on appeal in this Court, the Attorney General moves the Court that the case be docketed, the appeal dismissed, and the judgment of the lower Court affirmed under Rule 17 of the Rules of Practice in the Supreme Court.

Respectfully submitted, Harry McMullan, Attorney General; Ralph Moody, Assistant Attorney General.

[fols. 117-119] IN SUPREME COURT OF NORTH CAROLINA,  
SPRING TERM, 1950

[Title omitted]

### ORDER OF AFFIRMANCE

#### PER CURIAM:

The defendants were tried and convicted at the May Term, 1949, of Pitt County Superior Court, on an indictment charging murder in the first degree, and were sentenced to death, from which judgment they gave notice of appeal. Not having served Case on Appeal in apt time they applied to this Court for a writ of *certiorari* for bringing up the Case on Appeal, which was denied for want of merit. State v. Daniels, p. 17, *ante*. Subsequently they petitioned



the Court for leave to file a writ of error *coram nobis*; and not having brought themselves within the purview of such a writ, petition was denied. *State v. Daniels*, p. 241, *ante*. The above cited reports are referred to for a history of the case.

No case on appeal having been filed in the office of the Clerk, the Attorney General has caused the record proper to be filed in this Court and moves that the case and record be docketed and the appeal dismissed under Rule 17 of the Rules of Practice of the Court.

We have carefully examined the record filed in this case and find no error therein. For the causes stated the motion of the Attorney General is allowed; the judgment of the lower court is affirmed and the appeal is dismissed. *S. v. Watson*, 208 N. C. 70, 179 S. E. 455; *S. v. Johnson*, 205 N. C. 610, 172 S. E. 219; *S. v. Goldston*, 201 N. C. 89, 158 S. E. 926; *S. v. Hamlet*, 206 N. C. 568, 174 S. E. 451.

As to each defendant: *Judgment affirmed; Appeal dismissed.*

[fols. 120-121] IN SUPREME COURT OF NORTH CAROLINA

[Title omitted]

ORDER STAYING EXECUTION OF JUDGMENT—March 2, 1950

Upon consideration of the foregoing petition and motion of counsel for the defendant appellants, Bennie Daniels and Lloyd Ray Daniels, for an order staying the mandate and sentence of death herein, pending application to the Supreme Court of the United States for writ of certiorari, it is now here ordered that said motion be granted, and the mandate and sentence of death in this case be, and the same is hereby, stayed until the final determination of this case in the United States Supreme Court, on condition, however, that said petition for certiorari be submitted to the Supreme Court of the United States within the time required by law.

It appearing that the defendants are now confined on death row in the State Prison of North Carolina and are not entitled to bond under the laws of North Carolina; it is, therefore, ordered that no bond is allowed, but that the

prisoners shall remain in said State Prison, and the sentence of death shall be stayed pending said appeal.

This 2nd day of March, 1950.

(S.) Walter P. Stacy, Chief Justice of the Supreme Court of North Carolina.

[fol. 122] Proof of Service of Notice, Petition, Brief, and Record—(Omitted in Printing)

[fols. 123-154] Petition for Writ of Certiorari to the Supreme Court of North Carolina and/or to the Superior Court, Pitt County, North Carolina—(Omitted in Printing)

[fol. 154a] Brief of the State of North Carolina, Respondent, Opposing Petition for Writ of Certiorari—(Omitted in Printing)

[fols. 155-162] Reply Brief of Petitioners in Support of Petition for Writ of Certiorari—(Omitted in Printing)

[fol. 163] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1949

No. 412, Misc.

[Title omitted]

ORDER DENYING PETITION FOR WRIT OF CERTIORARI—May 8, 1950

On Petition for Writ of Certiorari to the Supreme Court of the State of North Carolina.

On consideration of the petition for a writ of certiorari herein to the Supreme Court of the State of North Carolina, it is ordered by this Court that the said petition be, and the same is hereby denied.

(S.) Hugh W. Barr, Deputy Clerk.

[fol. 164] Clerk's Certificate to foregoing transcript omitted in printing.

[fols. 165-166] IN SUPREME COURT OF NORTH CAROLINA

[Title omitted]

ORDER AFFIRMING JUDGMENT

In accordance with the certified copy of the mandate of the Supreme Court of the United States denying petition for writ of certiorari, dated May 8, 1950, received and filed in the office of the Clerk of this Court May 12, 1950, the judgment heretofore entered in the above entitled case, opinion filed March 1, 1950, is affirmed.

This the 24 day of May, 1950.

(S.) Sam J. Ervin, Jr., Associate Justice of the Supreme Court of North Carolina, For the Court.

[fols. 167-185] Notice and Petition for Permission to file Petition for Writ of Error Coram Nobis in Superior Court of Pitt County. (Omitted in printing.)

[fols. 186-202] Answer to Petition or Application for Writ of Error Coram Nobis. (Omitted in printing.)

[fol. 203] IN SUPREME COURT OF NORTH CAROLINA, SPRING TERM, 1950

[Title omitted]

ORDER DENYING PETITION FOR WRIT OF ERROR CORAM NOBIS

PER CURIAM:

The petitioners, Bennie Daniels and Lloyd Ray Daniels, were tried at May Term, 1949 of Pitt County Superior Court on an indictment charging them with the murder of William Benjamin O'Neal, and were convicted of murder in the first degree, without recommendation of mercy, and were sentenced to death. From this judgment they gave notice of appeal to the Supreme Court of North Carolina; and an order was made permitting them to appeal *in forma pauperis*. Not having perfected that appeal by serving case on appeal within the time allowed, they petitioned this Court

for a writ of *certiorari* to bring up the case on appeal, which writ was denied for want of merit. *State v. Daniels*, 231 N. C. 17.

They then filed in this Court a petition for permission to file in the court of trial, to-wit, the Superior Court of Pitt County, a writ of error *coram nobis*. This petition was denied for want of substantial merit, and because it failed to bring the application within the purview of such a writ. *State v. Daniels*, 231 N. C. 341.

On motion of the Attorney General the appeal of defendants was dismissed by this Court in decision filed March 1, 1950, *State v. Daniels*, 231 N. C. 509.

The present petitioners thereupon filed in the Supreme Court of the United States a petition for *certiorari* to have the matter reviewed in that Court, and proceedings here were stayed by order of Chief Justice Staey, pending action upon said petition.

On May 8, 1950, the Supreme Court of the United States [fol. 204] denied the petition without opinion, and this denial has been duly certified to this Court.

The petitioners now again petition this Court for leave to file a petition in the Superior Court of Pitt County for a writ of error *coram nobis*; and incorporate in that petition substantially matters that were presented to the Supreme Court of the United States in their petition to that Court for *Certiorari*. On the face of the petition it appears that these are matters fully presented to the Court upon their trial and there passed upon.

The function and limitations of the writ of error *coram nobis* were called to the attention of counsel for the petitioners when the petition for *certiorari* to bring up the case on appeal was dismissed in this Court. *State v. Daniels*, 231 N. C. 17, *supra*; and again in the subsequent decision dismissing the petition for leave to file a petition for such writ in the trial court.

The writ of error *coram nobis* obtains in this Court only by virtue of adoption of the common law; In re Taylor, 229 N. C. 297; In re Taylor, 230 N. C. 566, *supra*; *State v. Daniels*, 231 N. C. 17, *supra*; and is attended with its common law limitations.

The writ of error *coram nobis* is not a substitute for



appeal. Under our practice permission to petition the Superior Court in which the petitioning defendant was tried is given only when the matter on which the petition is based is "extraneous to the record." *State v. Taylor*, 229 N. C. 297, 49 S. E. (2d) 749; *In re Taylor*, 230 N. C. 566; 63 Am. Jur., p. 766, Sec. 1276; 4 C. J. S., Sec. 9.

We understand that the petition for *certiorari* presented to the Supreme Court of the United States comprehended all matters which might be pleaded in that Court in the premises, and upon which the petitioners may now rely.

The petition is denied.

Petition Denied.

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[fols. 205-206] Clerk's Certificate to foregoing transcript omitted in printing.

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[fol. 207]

[File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

WRIT OF HABEAS CORPUS—Filed July 10, 1950

To United States of America:

To J. P. Crawford, Warden, Central Prison of the State of North Carolina, Raleigh, North Carolina, Greeting:

The above entitled matter having come on for hearing before me, Don Gilliam, Judge of the United States District Court for the Eastern District of North Carolina, upon a petition for a writ of habeas corpus filed by the above named petitioners on the 2nd day of June, 1950, and an order to show cause issued to and upon you by the Court pursuant to said petition on the 5th day of June, 1950, and upon a return and answer made to said order to show cause on the 24th day of June, 1950; and it appearing to the Court, upon due consideration of the allegations set out in the said petition and the answer and return made thereto, that serious issues of fact have been and are

raised with respect to the constitutionality of the detention and imprisonment of the said petitioners, which issues warrant a full investigation into said matter by the Court;

It is therefore ordered and commanded that you have the body of Bennie Daniels and Lloyd Ray Daniels, by whatever name they may be called, if they be now in your custody and control, before me, the undersigned, at the United States District Court, in the City of Wilson, North Carolina, at 10:00 o'clock a. m., on the 30th day of October, 1950, together with a return of this writ in writing, showing whether you have said parties in your custody, or under your power or restraint, and if so, the authority and cause of such imprisonment or restraint, setting forth the same at large; then and there to receive, abide by, and perform such orders as may be made in the premises. And have you then and there this writ.

[fol. 208] It is further ordered that the above named prisoners shall, from the date of service of this writ upon you, be transferred into and held under the custody and control of this Court from the said date of service of said writ until the said 30th day of October, 1950, the return day of said writ; and the said prisoners shall be detained under the authority of this court, as aforesaid, in the Central Prison of the State of North Carolina, in the City of Raleigh, North Carolina.

It is further ordered that the Clerk of this Court shall serve, or caused to be served, a copy of this writ upon the Attorney General of the State of North Carolina.

Issued this 8th day of July, 1950.

Don Gilliam, Judge, United States District Court.

[fol. 208a] Proof of Service—(Omitted in Printing)

[fol. 209] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

REPLY OF PETITIONERS—Filed August 7, 1950

The petitioners, Bennie Daniels and Lloyd Ray Daniels, replying to the Answer of the respondent to their petition for writ of habeas corpus, say:

1. That they deny each and every allegation of paragraph 2 of the Answer except insofar as said paragraph admits allegations contained in paragraph 2 of the petition.

2. That they deny each and every allegation of paragraph 4 of the answer except insofar as said paragraph admits the allegations contained in paragraph 4 of the petition.

3. That they deny each and every allegation contained in paragraph 5 of the answer except insofar as said paragraph admits allegations contained in paragraph 5 of the petition.

[fols. 210-212] 4. That they deny each and every allegation contained in the answer by way of plea in bar of the relief sought in the petition except insofar as said allegations admit the allegations contained in the petition.

Wherefore the petitioners pray that the answer and plea in bar contained in said answer be dismissed and that the relief prayed for in the petition be granted.

Bennie Daniels, Lloyd Ray Daniels.

*Duly sworn to by Bennie Daniels and Lloyd Ray Daniels.  
Jurat omitted in printing.*

Certified copy mailed to Ralph Moody, Asst-Atty. Gen.,  
8/7/50.

[fol. 213]

[File endorsement omitted]

## IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO DISMISS—Filed December 18, 1950

The Respondent, J. P. Crawford, Warden of the Central Prison of the State of North Carolina, Raleigh, N. C., now moves the Court to dismiss the Petition for Writ of Habeas Corpus filed in this cause; to dismiss and discharge the Writ of Habeas Corpus heretofore issued in this cause; and that the Petitioners be remanded to the custody of Respondent for the purpose of making effective the sentence based upon the Judgment of the Superior Court of Pitt County, for the reasons and grounds following:

1. For that the record of the proceedings in the State Courts in the case of Petitioners, a certified copy of same being filed in this Court, discloses that the Supreme Court of North Carolina, the highest appellate court in the State of North Carolina, had jurisdiction to review upon appeal the matters and things about which Petitioners now complain and seek a review in the Federal District Court by Petition and Writ of Habeas Corpus; that Petitioners failed to comply with the conditions upon which an appeal is granted by the Criminal Code of Procedure of the State of North Carolina and thereby failed to exhaust their remedy of appeal provided by the State and cannot now have a review of these same questions by Writ of Habeas Corpus as a substitute for an appeal.

2. For that the record of Petitioners' trial in the Superior Court of Pitt County, N. C., does not show or disclose any exceptional circumstances of peculiar urgency in connection with said trial that require the intervention of a Federal Court by Habeas Corpus; that said record as well [fol. 214] as said Petition of Writ of Habeas Corpus discloses that there has not been any gross violation of constitutional rights of Petitioners such as to deny the substance of a fair trial or that Petitioners were prevented from raising any questions for their defense on said trial because of ignorance, duress or other reason for which Peti-



tioners should not be held responsible; that Petitioners have not exhausted their remedies under state law.

3. For that the Petition discloses that Petitioners seek a review by Writ of Habeas Corpus of the issue as to whether or not members of Petitioners' race were unconstitutionally excluded from service on Grand and Petit juries in Pitt County, North Carolina, and such question or issue having been raised, tried and heard in the State Court and decided adversely to Petitioners, the same cannot now be reviewed by Writ of Habeas Corpus; that said issue or question of alleged jury discrimination could have been reviewed by the Supreme Court of North Carolina on appeal and Petitioners having failed to perfect their appeal to said appellate court, cannot now have said questions or issue reviewed by the Federal Court on Writ of Habeas Corpus; that if there was error in the decision of the State Court on the question or issue of jury discrimination the same was an irregularity and not a jurisdictional defect and cannot now be reviewed by Writ of Habeas Corpus.

4. For that the Petition discloses that the Petitioners seek a review of the question as to whether or not certain confessions made by the Petitioners were voluntary and whether or not said confessions were secured from Petitioners by methods contrary to the Fourteenth Amendment of the Federal Constitution; that all of said questions relating to said confessions were heard and reviewed by the trial Court, which decided adversely to Petitioners and admitted said confessions in evidence, and whether said ruling of the trial court is correct or not the same is not a jurisdictional defect, does not deprive and did not deprive the trial court of jurisdiction and cannot now be reviewed [fol. 215] by Writ of Habeas Corpus; that all questions and issues relating to said confessions could have been reviewed by the Supreme Court of North Carolina on appeal, said Court being the highest appellate court in the State, and Petitioners having failed to perfect their said appeal cannot now have said questions reviewed on Writ of Habeas Corpus.

5. For that the constitutionality and legal validity of the procedure of the State of North Carolina for the determination of the admissibility of confessions, as well as

the question as to whether or not said procedure violates Petitioners' rights of jury trial cannot be reviewed upon Writ of Habeas Corpus; that said questions could have been reviewed by the Supreme Court of North Carolina had the Petitioners seen fit the perfect their appeal to said appellate court, and having not perfected said appeal, said questions cannot now be reviewed by Writ of Habeas Corpus.

6. For that all questions as to the instructions of the Court to the jury; and all questions as to the instructions of the Court to the jury as to how the jury should consider said confessions and as to whether said confessions were voluntary or not, cannot be reviewed by Writ of Habeas Corpus.

R. Brookes Peters, Jr., General Counsel, State Highway & Public Works Commission; Harry McMullan, Attorney General of North Carolina; Ralph Moody, Assistant Attorney General of North Carolina; E. O. Brogden, Attorney, State Highway & Public Works Commission.

[fol. 216] IN UNITED STATES DISTRICT COURT

[Title omitted]

RETURN TO WRIT—Filed December 18, 1950

To His Honor Don Gilliam, United States District Judge Presiding Over the District Court of the United States for the Eastern District of North Carolina, Raleigh Division:

The respondent, J. P. Crawford, Warden of the Central Prison of the State of North Carolina, Raleigh, N. C., respectfully makes the following return to the Writ of Habeas Corpus issued to him on the 8th day of July, 1950.

1. That in his official capacity he has the said Bennie Daniels and Lloyd Ray Daniels in custody at Central Prison, Raleigh, North Carolina.
2. That the authority under which he has the said Bennie Daniels and Lloyd Ray Daniels in custody and imprison-

ment is by virtue and authority of Judgments from the May 30th Term, 1949, of the Pitt County Superior Court, photostatic copies of which are hereto attached and by reference made a part of this return. That certified copies of said Judgments will be produced and exhibited to Your Honor upon the return of this writ.

3. That the answer heretofore filed by the undersigned respondent in opposition to the petition for Writ of Habeas Corpus, filed in this proceeding and now pending before this court, is hereby referred to and made a part of this return for the purpose of showing the authority by which the aforesaid Bennie Daniels and Lloyd Ray Daniels are being held in custody and imprisonment.

4. That upon the return of said writ at the time and place therein set out or designated by Your Honor, he now has before Your Honor the bodies of the said Bennie Daniels and Lloyd Ray Daniels as by said Writ commanded. [fol 217] And having made a full return of said Writ, he now stands ready and willing to receive, abide by, and perform such orders as your Honor may make in the premises.

J. P. Crawford, Warden of the Central Prison of the State of North Carolina.

*Duly sworn to by J. P. Crawford. Jurat omitted in printing.*

[fol. 218] IN THE SUPERIOR COURT, MAY 30TH TERM 1949

NORTH CAROLINA, PITT COUNTY

STATE

VS.

BENNIE DANIELS

JUDGMENT

The prisoner, Bennie Daniels, having been convicted of murder in the first degree by verdict of the Jury duly returned at this term of the Superior Court of Pitt County, North Carolina,

It Is, Therefore, Ordered and Adjudged that the said Bennie Daniels be, and he is hereby sentenced to death by asphyxiation, and the Sheriff of Pitt County, North Carolina, in whose custody the said defendant now is, forthwith convey such prisoner, Bennie Daniels, to the State Penitentiary at Raleigh, North Carolina, and deliver said prisoner, Bennie Daniels, to the warden of the State's Penitentiary, who, the said Warden, on Friday the 15th day of July 1949, shall cause the said prisoner, Bennie Daniels, to inhale lethal gas of sufficient quantity and volume to cause the death of said prisoner, Bennie Daniels, which administration and inhalation of such lethal gas shall be continued until life is extinguished and the said prisoner, Bennie Daniels, is dead.

May God have mercy upon his soul.

Clauson L. Williams, Judge Presiding.

[fol. 219] IN THE SUPERIOR COURT, MAY 30TH TERM 1949

NORTH CAROLINA, PITT COUNTY

STATE

VS.

LLOYD RAY DANIELS

JUDGMENT

The prisoner, Lloyd Ray Daniels, having been convicted of murder in the first degree by verdict of the Jury duly returned at this term of the Superior Court of Pitt County, North Carolina,

It Is, Therefore, Ordered and Adjudged that the said Lloyd Ray Daniels be, and he is hereby sentenced to death by asphyxiation, and the Sheriff of Pitt County, North Carolina, in whose custody the said defendant now is, forthwith convey such prisoner, Lloyd Ray Daniels, to the State Penitentiary at Raleigh, North Carolina, and deliver said prisoner, Lloyd Ray Daniels, to the Warden of the State's Penitentiary, who, the said Warden, on Friday the 15th day of July 1949, shall cause the said prisoner,



Lloyd Ray Daniels, to inhale lethal gas of sufficient quantity and volume to cause the death of said prisoner, Lloyd Ray Daniels, which administration and inhalation of such lethal gas shall be continued until life is extinguished and the said prisoner, Lloyd Ray Daniels, is dead.

May God have mercy upon his soul.

Clauson L. Williams, Judge Presiding.

[fol. 220]

[File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS—Filed  
February 28, 1951

To the District Court of the United States for the Eastern  
District of North Carolina:

The Supplemental Petition of Bennie Daniels and Lloyd Ray Daniels respectfully shows:

1. They repeat and reallege and incorporate as part hereof the facts recited in paragraphs "1" and "2", pages 1 to 10, of their Petition to this Honorable Court for a Writ of Habeas Corpus.

2. Upon their Petition for a Writ of Certiorari to the United States Supreme Court, petitioners assigned as error, as a deprivation of their rights to the equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution, the refusal of the Supreme Court of North Carolina to review their appeal on the merits.

[fol. 221] 3. In addition to the facts recited in paragraphs "1" and "2" of their petition to this Honorable Court, facts exist demonstrating that the refusal by the North Carolina Supreme Court to entertain petitioners' appeal was an arbitrary and unreasonable deprivation of petitioners' rights under the laws of the State of North Carolina to appeal from a conviction. On June 6, 1949 a judgment of death by asphyxiation was rendered against

the petitioners on a verdict of guilty of first degree murder. Thereupon petitioners noted an appeal to the Supreme Court of North Carolina and were allowed 60 days in which to make out and serve a statement of the case on appeal upon the Solicitor for the Fifth Judicial District of the State of North Carolina. Approximately one month passed before counsel for petitioners received the first volume of the record of the criminal trial, which first volume consisted of approximately 300 pages; and counsel for petitioners did not receive the full and complete record in the criminal cause from the court stenographer until approximately 50 or 51 days after June 6. Despite the delay in the receipt of the record in the criminal cause, counsel for petitioners made all diligent efforts to prepare the statement of the case on appeal within the time prescribed so that although the last volume of the record was received about only one week prior to the expiration of the time for service of the statement of the case on appeal counsel for petitioners, by diligent and painstaking efforts, completed the preparation of the said statement on the afternoon of Thursday, August 4, which was one day before the deadline. On Friday, April 5, the last day on which service of the statement of the case on appeal could be made, Herman L. Taylor, Esq., one of the attorneys for petitioners, telephoned the office of the Honorable William J. Bundy, Solicitor, in Greenville, North Carolina, from Fayetteville, North Carolina, where Mr. Taylor was engaged in another matter, and by that telephone conversation Mr. Taylor attempted to communicate with Mr. Bundy for the purpose of serving the case on appeal. Mr. Taylor was informed by the telephone operator that the Solicitor was not in his office and Mr. Taylor thereupon spoke to Mrs. M. W. Fields, the Solicitor's secretary, and she informed Mr. Taylor that the Solicitor was not in his office or at his home and that he was out of town and could not be reached until Monday morning, August 8, when he would return to his office. Unable to contact the Solicitor in person, Mr. Taylor, on Saturday morning, August 6, 1949, left a copy of the statement of the case on appeal at the Office of the Solicitor with the latter's secretary, and Mr. Taylor received in return a signed

statement of acceptance of the statement by the said Mrs. M. W. Fields, on behalf of the Solicitor. 45 days thereafter the Solicitor served and filed 132 exceptions to the case on appeal, thereby indicating that he was in no wise prejudiced or injured by the one-day delay in the service of the case on appeal. Nevertheless the Supreme Court of the State of North Carolina, on the basis of the foregoing [fol. 223] factual situation, has refused and continues to refuse to entertain the appeal of the petitioners.

4. Petitioners are informed by their attorneys and they believe that under the decisions of the Supreme Court of the United States an arbitrary and unreasonable interference with or deprivation of the right to appeal from a conviction constitutes a violation of the constitutional guarantee of the equal protection of the laws. Upon the basis of the applicable rule of law herein referred to and in view of the facts herein recited, petitioners are unjustly and unlawfully detained and imprisoned.

5. The petitioners have exhausted all of their State remedies, including a Petition for Writ of Certiorari to the United States Supreme Court, with respect to the foregoing error by the Courts of the State of North Carolina and petitioners are therefore remediless save in this Court and by this procedure.

6. There is presently pending in this Court the petitioners' application for Writ of Habeas Corpus but no previous application for said Writ has been made by petitioners upon the grounds herein asserted.

[fol. 224] Wherefore, the premises considered, the petitioners pray:

(1) That a Writ of Habeas Corpus directed to the said respondent, J. P. Crawford, may issue in their behalf so that petitioners may be brought forthwith before this Court;

(2) That said respondent be required to appear and answer the allegations of this petition;

(3) That following a full and complete hearing, this Court relieve petitioners of their unlawful detention, imprisonment and sentence of death;

(4) And for such other and further relief as to this Court may seem just and proper under the circumstances.

Bennie Daniels, Lloyd Ray Daniels.

[fols. 225-245] *Duly sworn to by Bennie Daniels and Lloyd Ray Daniels. Jurat omitted in printing.*

[fol. 246]

[File endorsement omitted].

IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF RESPONDENT TO SUPPLEMENTAL PETITION FOR  
WRIT OF HABEAS CORPUS--Filed May 17, 1951

The Respondent, J. P. Crawford, Warden of the Central Prison of the State of North Carolina, Raleigh, North Carolina, by B. M. Poole, Assistant Warden, answering the Supplemental Petition for Writ of Habeas Corpus herein filed, for his Answer says:

1. The allegations of Paragraph 1, as well as the allegations contained in Paragraphs 1 and 2 of the former Petition filed in this case, are untrue and are, therefore, denied.

2. Answering the allegations contained in Paragraph 2 of the Supplemental Petition, the Respondent alleges that the Petition for Writ of Certiorari to the Supreme Court of the United States is a part of the record in this cause, and Respondent alleges, therefore, that he is not required to answer this paragraph; that the Petitioners have not been deprived of any constitutional rights guaranteed by the Fourteenth Amendment to the United States Constitution by reason of the refusal of the Supreme Court of North Carolina to review their appeal on the merits; that the allegations of Paragraph 2 are untrue and are, therefore, denied.

3. The allegations of Paragraph 3 are untrue and are, therefore, denied; further answering said Paragraph 3, the [fol. 247] Respondent alleges that all of the matters and things alleged and referred to in said Paragraph 3 were



considered and passed upon by the Supreme Court of North Carolina, and Respondent, therefore, alleges that the decision of the Supreme Court of North Carolina is final and binding upon Petitioners and cannot now be invalidated or set aside by collateral attack in a habeas corpus proceeding.

4. The allegations of Paragraph 4 are untrue and are, therefore, denied.

5. The allegations of Paragraph 5 are untrue and are, therefore, denied.

6. Answering the allegations of Paragraph 6, it is admitted that there is now pending in this Court an application for a Writ of Habeas Corpus, and except as herein admitted, the allegations of Paragraph 6 are untrue and are, therefore, denied.

Wherefore, having fully answered, the Respondent prays the Court that the Petitioners take nothing by their Supplemental Petition for Writ of Habeas Corpus and that the same be dismissed.

• Harry McMullan, Attorney General of North Carolina; Ralph Moody, Assistant Attorney General; R. Brookes Peters, General Counsel for the State Highway & Public Works Commission; E. L. Brogden, Jr., Attorney and Member of Staff of State Highway & Public Works Commission, Attorneys for Respondent, J. P. Crawford, Warden of the Central Prison of the State of North Carolina, Raleigh, North Carolina.

5/17/51. Copy of answer handed to Herman Taylor, attorney for petitioner.

E. L. Brogden, Jr.

[fols. 248-265] *Duly sworn to by B. M. Poole. Jurat omitted in printing.*

[fol. 266]

[File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

FINDINGS OF FACT AND CONCLUSIONS OF LAW  
—Filed July 12, 1951

Upon the evidence presented and the stipulations of counsel, the Court finds these facts:

1. Petitioners, inmates of the Central Prison of the State of North Carolina, instituted this proceeding against respondent, Warden of the aforesaid prison, under Chapter 153 of Title 28 of the United States Code by affidavit and motion to proceed *in forma pauperis* for a writ of habeas corpus.
2. Petitioners contend that they are unlawfully detained in prison and under sentence of death at the aforesaid prison.
3. Petitioners were convicted of the crime of murder in the first degree in the May 30, 1949 Term of the Superior Court of Pitt County, North Carolina, on June 6, 1949.
4. The indictment of petitioners was found by a Grand Jury sitting at the March Term, 1949, of Pitt County Superior Court, and upon its return, it having been made to appear to the Court that petitioners were without counsel and were financially unable to obtain counsel, the Court appointed two members of the Pitt County Bar of experience to represent them; upon arraignment at that term a plea of "not guilty" was entered and the trial of the case continued for the term; thereupon the presiding Judge committed the petitioners to the care and custody of the North Carolina State Hospital for the Insane, and to Dr. I. C. Long, an expert psychiatrist, for the purpose of study of their mental condition; when it appeared at the April Term, 1949, that the examination had not been completed, the cause [fol. 267] was continued upon motion of petitioner's counsel until the May Term, 1949, at which term it was tried; when it was made to appear to the Court at the call of the case at that term that petitioners had obtained counsel of their own choice, that is, Mr. Herman L. Taylor and Mr. C. J.

Gates, both now of counsel for them; appointed counsel were relieved of the assignment by the Court: prior to the call of the case the petitioners had been adjudged sane by the staff of the North Carolina Hospital for the Insane.

5. Upon the call of the case for trial, counsel for petitioners for the first time presented a motion to quash indictment and a challenge to the array of the trial jury, alleging systematic and purposeful exclusion of negroes from jury service solely on account of race; the trial court ruled that, under N. C. procedure, as the motion to quash was made after pleading to the indictment, it lay within the discretion of the Court whether it would allow or deny it; the Court then heard evidence from both the State and the petitioners and upon such evidence overruled both the motion to quash and the challenge to the array. The Court found the facts upon which his decision was based and these are set out in Volume 4 of the Transcript at pages 4 to 22.

6. During the progress of the trial the State offered the alleged confession of each petitioner; upon objection entered upon ground that such confessions were procured by coercion and, therefore, not voluntary, the trial Judge, in accord with N. C. practice and procedure, dismissed the jury and heard evidence from both the State and petitioners; upon this evidence the Court concluded that the confessions were made without offer of reward or hope of reward, freely and voluntarily, and that they were not extorted by either coercion, intimidation, or exhibition of any force or threat; having so found, the Court overruled the objections and the confessions were admitted as evidence for the jury's consideration. The Court's findings of facts [fol. 268] in regard to voluntariness of the confessions are set out in Volume 1 of Transcript at page 268.

7. The jury returned a verdict of guilty without recommendation of mercy and the petitioners were sentenced to death by asphyxiation, such sentence being mandatory under North Carolina law.

8. The petitioners, with the permission of the Court, appealed in forma pauperis to the Supreme Court of North Carolina, and by order of the Court petitioners were allowed 60 days from the date of the judgment in which to make out and serve a case on appeal upon the Solicitor of



the District, and the Solicitor was allowed 30 days after such service to serve his counter-case or exceptions; the judgment against the petitioners was entered on June 6, 1949, and the petitioners' case on appeal was served on the Solicitor on August 6, 1949, one day after the expiration of the 60 days allowed by the Court. Within the 30 days allowed, following service of the petitioners' case on appeal, the Solicitor filed a number of exceptions and also a motion to strike out the petitioners' case on appeal because not served within the sixty days allowed. When it became apparent that the case could not be docketed by September 27, 1949, which was the last day for docketing appeals from the Judicial District which embraces Pitt County, the petitioners, through their counsel, on September 27, 1949 filed a petition for writ of certiorari before the Supreme Court of North Carolina, praying that they be allowed to docket the appeal which they duly noted at the May 30, 1949 Term of the Superior Court of Pitt County, setting forth that as the case on appeal in their cause had not been settled they could not docket said case within the time required by the rules of the Court. Two days after the filing of this petition for writ of certiorari a hearing was held before the Superior Court Judge who tried the case, and ultimately on the 30th day of October, 1949, the Trial Judge entered an order allowing the motion of the Solicitor to strike defendant's statement of case on appeal. The petition for writ of certiorari was heard by the Supreme Court of North [fol. 269] Carolina at the Fall Term, 1949, and denied, and in the Court's opinion, 231 N. C., page 25, it is written:

"The gravamen of the present challenge to the validity of the trial is found in the two objections referred to in the petition: The alleged systematic exclusion of members of the negro race from the jury lists of Pitt County and the consequent absence of negroes from the panel which tried them; the admission in evidence of confessions of guilt by the accused, which confessions they contend were not voluntary but were procured by illegal means.

"Both these objections involve questions of invasion of constitutional rights which, in the instant case, can be presented only through matter extraneous to the record. Ordi-



narily in this situation, resort may be had to writs of error coram nobis.

"The writ of error coram nobis can only be granted in the court where the judgment was rendered.

"Since here the authority for the writ stems from the supervisory power given the Supreme Court in the section of the Constitution cited, it is necessary that an application be made to this Court for permission to apply for the writ to the Superior Court in which the case was tried. It is granted here only upon a 'prima facie showing of substantiality,' and it is observed in the Taylor case last cited, 'The ultimate merits of the petitioner's claim are not for us but for the trial court.'

"On consideration in the trial court, if the decision is adverse to the petitioners, the court will find the facts, and an appeal to this Court will lie as in other cases."

Following the denial of the petition for writ of certiorari, and following, no doubt, the suggestion contained in the opinion of the Court, the petitioners filed a petition with the Supreme Court of North Carolina for permission to apply to the Superior Court of Pitt County for a writ of error coram nobis; this petition was denied, the Supreme Court stating: "Their petition does not make a prima facie showing of substance, which is necessary to bring themselves within the purview of the writ.

[fol. 270] "The petition is insufficient to justify the Court in issuing the writ and instigating the incident procedure in the court below." *State v. Daniels*, 231 N. C. 341.

On March 1, 1950, the State of North Carolina, acting through its Attorney General, moved to docket and dismiss under Rule 17 of the Rules of the Supreme Court of North Carolina the appeal of petitioners from the death sentence, and this motion was allowed and the appeal dismissed. *State v. Daniels*, 231 N. C. 509. In the opinion in this case the Supreme Court of North Carolina said: "The defendants were tried and convicted at the May Term, 1949, of Pitt County Superior Court, on an indictment charging murder in the first degree, and were sentenced to death, from which judgment they gave notice of appeal. Not having served Case on Appeal in apt time they applied to this Court for a writ of certiorari for bringing up the Case on Appeal, which

was denied for want of merit. Subsequently they petitioned the Court for leave to file a writ of error coram nobis; and not having brought themselves within the purview of such a writ, petition was denied.

"No case on appeal having been filed in the office of the Clerk, the Attorney General has caused the record proper to be filed in this Court and moves that the case and record be docketed and the appeal dismissed under Rule 17 of the Rules of Practice of the Court.

"We have carefully examined the record filed in this case and find no error therein. For the causes stated the motion of the Attorney General is allowed; the judgment of the lower court is affirmed and the appeal is dismissed."

Thereupon, on the second day of March, 1950, execution of judgment was stayed by the Chief Justice of the Supreme Court of North Carolina, and the petitioners filed an application in the Supreme Court of the United States for a petition for writ of certiorari; a petition, brief, and other formal parts of a petition for writ of certiorari were filed in the Supreme Court of the United States, and on May 8, 1950 the [fol. 271] petition for writ of certiorari was denied. 339 U. S. 954.

The petitioners then petitioned the Supreme Court of North Carolina again for leave to file a petition in the Superior Court of Pitt County for a writ of error coram nobis, and incorporated in that petition matters that were presented to the Supreme Court of the United States in their petition to that Court for certiorari. This petition was denied on May 24, 1950. 232 N. C. 196. The N. C. Supreme Court stated: "On the face of the petition it appears that these are matters fully presented to the Court upon their trial and there passed upon."

Upon the denial of this petition and on the — day of —, 1950, the petitioners filed a petition for writ of habeas corpus in the Raleigh Division of this Court, and the Court issued the writ and stayed the execution of the judgments of the State Court.

9. The respondent, in compliance with the writ, brought the petitioners before the Court in Tarboro, North Carolina, in the Eastern District of North Carolina, on the 18th day

of December, 1950, to which date the return by order of the Court had been continued.

At the outset of the hearing upon the return, the respondent filed a motion to discharge the writ without the taking of evidence. The motion is filed with the court papers. The Court reserved its decision upon the motion and proceeded to the taking of evidence from both the petitioners and the respondent. The respondent entered a general objection to every question propounded by petitioners to their witnesses, and upon the overruling of each objection the respondent moved to strike out the answer to the question, and in each instance the motion was denied. In each instance where the respondent examined a witness in his behalf, the questions were propounded after the respondent had reiterated his [fol. 272] objection to all the evidence and reserved his exceptions.

10. At the conclusion of all the evidence, the respondent renewed his motion to dismiss and the motion was denied and overruled.

11. Petitioners are members of the negro race.

12. The facts found by the Trial Judge in the State Court, in respect to the composition of the jury, are supported by all the evidence, including that taken in the State Court, and these findings, which are set out in Volume 4 of the Transcript in the State Court, beginning on page 4 (Finding No. 4) and continuing through page 22 (Volume 4) are adopted as the findings of fact bearing on this question. And the Court specifically finds it was not shown that there was purposeful and systematic exclusion of negroes solely on account of race from either the jury box from which the indicting grand jury was drawn, or the jury panels from which the trial jury was selected.

13. The facts found by the Trial Judge in the State Court with respect to whether the offered confessions were voluntary or otherwise, which are set forth in Volume I of the transcript in the State Court on page 268, are adopted as findings in this respect. And the Court specifically finds that each of such confessions was made freely and voluntarily.



### Conclusions of Law

Upon these facts the Court concludes:

1. That the Court was in error in overruling the respondent's motion to dismiss as a matter of law before the introduction of evidence, and that such motion be and the same is now granted.

2. That the petitioners, who were held as prisoners awaiting execution under the judgment of the North Carolina Court, were not and are not "in custody in violation of the Constitution or laws or treaties of the United States" within the contemplation of Sec. 2241(c) (3) of Title 28, United States Code Annotated, and are not entitled to their release as prayed.

[fol. 273] 3. That the writ should be vacated, the petition dismissed, and the petitioners remanded to the respondent and the North Carolina authorities for further proceedings under the judgment of the State Court and in accordance with its provisions.

4. That an order to such effect be entered.

This the 12th day of July, 1951.

Don Gilliam, United States District Judge.

[fol. 274] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

LLOYD RAY DANIELS and BENNIE DANIELS, Petitioners

v.

JOSEPH P. CRAWFORD, Warden, Central Prison of the State of North Carolina, Raleigh, North Carolina, Respondent

MEMORANDUM OPINION—Filed July 12, 1951

The petitioners are negro boys who were 17 and 18 years of age, respectively, at the date of their trial in the Superior Court of Pitt County, North Carolina, which began on the 30th day of May, 1949. They were charged with first degree murder, and following a jury verdict of "Guilty" were sentenced to die.



Lloyd Ray was arrested without a warrant a day or two following the murder, by the Sheriff of Pitt County and certain other enforcement officers upon information justifying arrest without warrant under North Carolina Statute G. S. Sec. 15-41; he was taken to Williamston, the county seat of Martin County which adjoins Pitt County, for safekeeping, and during the automobile trip to the Martin County jail, a distance of less than fifty miles, he stated that he had participated in the murder, and related some of the details of how it was accomplished; Bennie was arrested without a warrant, also upon information justifying such action, by the Sheriff and other officers on the day following the arrest of Lloyd Ray, and he too was taken to Williamston for incarceration; on the way to Williamston Bennie admitted his participation in the murder, and later each petitioner signed a written confession which was introduced by the State at the trial.

The indictment was found by a Grand Jury sitting at the March Term, 1949, of Pitt County Superior Court, and upon its return, it having been made to appear that the petitioners were without counsel and that they were financially [fol. 275] unable to obtain counsel, the Court appointed two members of the Pitt County Bar, of experience and in good standing, to represent them. Upon arraignment at that Term the petitioners entered pleas of "Not guilty", and the cause was continued for the Term. Thereupon the Presiding Judge committed the petitioners to the care and custody of the North Carolina State Hospital for the Insane, at Goldsboro, and to I. C. Long, M. D., an expert psychiatrist, for the purpose of study of their mental condition. When at the next term, that is, April Term, 1949, it appeared that the examination at the State Hospital had not been completed, the cause was continued upon motion of petitioners' counsel until the May Term, 1949, at which term, as above indicated, it was tried. When it was made to appear to the presiding Judge at the April Term, 1949, that petitioners had obtained counsel of their own choice, that is, Mr. Herman L. Taylor and Mr. C. J. Gates, both now of counsel for them, the counsel earlier appointed by the Court were permitted to withdraw. Prior to the call of the case for trial, the petitioners had been found sane by the staff of the State Hospital at Goldsboro.

When the case was called for trial at the May Term, 1949, counsel for petitioners for the first time presented a motion to quash the indictment and a challenge to the array of the trial jury, alleging systematic and purposeful exclusion of negroes from jury service solely on account of race. The Court ruled that, as the motion to quash was made after pleading to the indictment, it lay within the discretion of the Court whether it would allow or deny the motion and the challenge. The Trial Judge then proceeded to hear evidence on this question from both the State and the petitioners, and upon such evidence overruled both the motion to quash and the challenge to the array.

During the progress of the trial the State offered the confessions of the petitioners. Upon objection made on the [fol. 276] ground that the confessions were procured by coercion and were, therefore, not voluntary, the Judge, in accord with the practice and procedure in North Carolina in such situations, heard evidence from the State and the petitioners in the absence of the jury, and concluded that the confessions were made without offer of reward or hope of reward, freely and voluntarily, that they were not extorted by either coercion, intimidation, or exhibition of any force or threat. Having so found, the Court overruled the objections and the confessions were admitted as evidence for the jury's consideration. The jury returned a verdict of guilty of murder in the first degree as to each petitioner, and as such verdict was not accompanied by a recommendation of life imprisonment—which by North Carolina Statute is permitted—the presiding Judge sentenced both petitioners to death, such being the mandatory punishment for murder in the first degree in the absence of a recommendation by the jury.

The petitioners, with the permission of the Court, appealed in forma pauperis to the Supreme Court of North Carolina, and by order of the Court petitioners were allowed sixty days from the date of the judgment in which to make out and serve a case on appeal upon the Solicitor of the District, and the Solicitor was allowed thirty days after such service to serve his counter case or exceptions; the judgment against the petitioners was entered on June 6, 1949, and the petitioners' case on appeal was served on the Solicitor on

August 6, 1949, one day after the expiration of the sixty days allowed by the Court. Within the thirty days allowed, following service of the petitioners' case on appeal, the Solicitor filed a number of exceptions and also a motion to strike out the petitioners' case on appeal, because not served within the sixty days allowed. When it became apparent that the case could not be docketed by September 27, 1949, which was the last day for docketing appeals from the [fol. 277] Judicial District which embraces Pitt County, the petitioners, through their counsel, on September 27, 1949, filed a petition for writ of certiorari before the Supreme Court of North Carolina, praying that they be allowed to docket the appeal which they duly noted at the May 30, 1949 Term of the Superior Court of Pitt County, setting forth that as the case on appeal in their cause had not been settled they could not docket said case within the time required by the rules of the Court. Two days after the filing of this petition for writ of certiorari a hearing was held before the Superior Court Judge who tried the case and ultimately on the 30th day of October, 1949, the Trial Judge entered an order allowing the motion of the Solicitor to strike defendants' statement of case on appeal. The petition for writ of certiorari was heard by the Supreme Court of North Carolina at the Fall Term, 1949, and denied, and in the Court's opinion, 231 N.C., page 25, it is written: "The gravamen of the present challenge to the validity of the trial is found in the two objections referred to in the petition: the alleged systematic exclusion of members of the negro race from the jury lists of Pitt County and the consequent absence of negroes from the panel which tried them; the admission in evidence of confessions of guilt by the accused, which confessions they contend were not voluntary but were procured by illegal means.

"Both these objections involve questions of invasion of constitutional rights which, in the instant case, can be presented only through matter extraneous to the record. Ordinarily, in this situation resort may be had to writs of error coram nobis . . .

"The writ of error coram nobis can only be granted in the court where the judgment was rendered . . .

"Since here the authority for the writ stems from the

supervisory power given the Supreme Court in the section [fol. 278] of the Constitution cited, it is necessary that an application be made to this Court for permission to apply for the writ to the Superior Court in which the case was tried. It is granted here only upon a 'prima facie showing of substantiality', and it is observed in the Taylor case last cited: 'The ultimate merits of the petitioner's claim are not for us but for the trial court'.

"On consideration in the trial court, if the decision is adverse to the petitioners, the court will find the facts, and an appeal to this Court will lie as in other cases."

Following the denial of the petition for writ of certiorari, and following, no doubt, the suggestion contained in the opinion of the Court, the petitioners filed a petition with the Supreme Court of North Carolina for permission to apply to the Superior Court of Pitt County for a writ of error coram nobis; this petition was denied, the Supreme Court stating: "Their petition does not make a prima facie showing of substance, which is necessary to bring themselves within the purview of the writ."

"The petition is insufficient to justify the Court in issuing the writ and instigating the incident procedure in the court below." *State v. Daniels*, 231 N. C., 341.

On March 1, 1950, the State of North Carolina, acting through its Attorney General, moved to docket and dismiss, under Rule 17 of the Rules of the Supreme Court of North Carolina, the appeal of petitioners from the death sentence, and this motion was allowed and the appeal dismissed. *State v. Daniels*, 231 N. C. 509. In the opinion in this case the Supreme Court of North Carolina said: "The defendants were tried and convicted at the May Term, 1949, of Pitt County Superior Court, on an indictment charging murder in the first degree, and were sentenced to death, from which judgment they gave notice of appeal. Not having served Case on Appeal in apt time they applied to this Court for a writ of certiorari for bringing up the Case on [fol. 279] Appeal, which was denied for want of merit. Subsequently they petitioned the Court for leave to file a writ of error coram nobis; and not having brought themselves within the purview of such a writ, petition was denied."



"No case on appeal having been filed in the office of the Clerk, the Attorney General has caused the record proper to be filed in this Court and moves that the case and record be docketed and the appeal dismissed under Rule 17 of the Rules of Practice of the Court.

"We have carefully examined the record filed in this case and find no error therein. For the causes stated, the motion of the Attorney General is allowed; the judgment of the lower court is affirmed and the appeal is dismissed."

Thereupon, on the second day of March, 1950, execution of judgment was stayed by the Chief Justice of the Supreme Court of North Carolina, and the petitioners filed an application in the Supreme Court of the United States for a petition for writ of certiorari; a petition, brief, and other formal parts of a petition for writ of certiorari were filed in the Supreme Court of the United States, and on May 8, 1950, the petition for writ of certiorari was denied. 339 U. S., 954.

The petitioners then petitioned the Supreme Court of North Carolina again for leave to file a petition in the Superior Court of Pitt County for a writ of error coram nobis, and incorporated in that petition matters that were presented to the Supreme Court of the United States in their petition to that Court for certiorari. This petition was denied on May 24, 1950. 232 N. C. 196. The North Carolina Supreme Court stated: "On the face of the petition it appears that these are matters fully presented to the Court upon their trial and there passed upon."

Upon the denial of this petition and on the 2nd day of June, 1950, the petitioners filed a petition for writ of habeas [fol. 280] corpus in this Court, and the Court issued the writ and stayed the execution of the judgments of the State Court pending a hearing.

At the outset of the hearing upon the return to the writ, the respondent filed a motion to discharge the writ without the taking of evidence. The motion is filed with the court papers. The Court reserved its decision upon the motion and proceeded to the taking of evidence from both the petitioners and the respondent. The respondent entered a general objection to every question propounded by petitioners to their witnesses, and upon the overruling of each objection the respondent moved to strike out the answer

to the question, and in each instance the motion was denied. In each instance where the respondent examined a witness in his behalf, the questions were propounded after the respondent had reiterated his objection to all the evidence and reserved his exceptions.

Upon the evidence introduced, the Court has found certain facts separately and these findings are filed simultaneously herewith.

At the conclusion of all the evidence, the respondent renewed his motion to dismiss and the motion was denied and overruled.

Further study following the presentation of briefs and oral argument has convinced me that the decision overruling the respondent's motion to dismiss the writ as a matter of law upon the procedural history was erroneous, and that the motion should have been granted. It would be a stupendous undertaking to review the numerous decisions on this question and I do not feel called upon to do so. These decisions are reviewed in a number of cases, among them *Smith v. United States*, decided by the U. S. Court of Appeals of the District of Columbia on December 7, 1950, and reported in 187 Fed. (2) at page 192.

[fol. 281] The general principles involved in cases of this nature where habeas corpus is resorted to by one under judgment of a State Court are discussed by Chief Judge Parker in *Sanderlin v. Smith*, 138 Fed. (2) p. 729, where these general observations are set out: (p. 730) "The writ of habeas corpus may not be used in such cases as an appeal or writ of error to review proceedings in the State Court"; p. 731) "The judgment of the State Court is ordinarily *res adjudicata*, not only of those issues which were raised and determined, but also of those which might have been raised"; (p. 731) "Ordinarily, adjudications made by the State Courts in connection with applications made to them will be binding on the federal courts"; (p. 732) "The only question which we can consider with respect to these matters is, not whether error was committed under State practice, but whether there was a denial of due process as guaranteed by the federal Constitution"; (p. 732) "As said in the case last cited (*Buchalter v. New York*, 319 U. S., p. 427): 'The due process clause of the 14th

Amendment requires that action by a State through any of its agencies must be consistent with the fundamental principles of liberty and justice which lie at the base of our civil and political institutions, which are not infrequently designated as the law of the land. Where the requirement has been disregarded in a criminal trial in a State Court, this Court has not hesitated to exercise its discretion to enforce the constitutional guarantee. But the Amendment does not draw to itself the provisions of State constitutions and State laws. It leaves the State free to enforce their criminal law doctrines as they deem appropriate; and does not permit a party to bring to the test of a decision in the Court every ruling made in the course of a trial in a State Court. . . . As already stated, the due process clause of the 14th Amendment does not enable us to review errors of [fol. 282] State law however material under 'State law'."

Other cases which seem to uphold the view that the decision of the State Court is binding on this Court are: *Andrews v. Swartz*, 156 U. S. 272; *Morton v. Henderson*, 123 Fed. (2) 48; *Hawk v. Olsen*, 130 Fed. (2) 910. There are others.

Maybe, in spite of the decisions, it is true, as petitioners contend, that where it appears clearly that there has been such a gross violation of a defendant's constitutional rights as amounts to a denial of even the substance of a fair trial, the United States Court will strike down the trial and judgment in the State Court. But such a case is not presented. The petitioners, though young and illiterate as their counsel points out, were ably and adequately represented, first by experienced counsel named by the Court, and later by counsel of their own selection; before their trial the State Court took the precaution of having them examined by competent psychiatrists who found them sane; the identical questions which petitioners wish passed upon now were passed upon in the State Court, not in a mere pro forma manner but painstakingly and carefully by the Trial Judge who heard practically the same witnesses and the same evidence presented to this Court, and upon such evidence concluded the questions against the petitioners; an appeal was taken to the Supreme Court of the State; though the petitioners failed to comply with the law in serving the case on appeal and for this reason the case on

appeal was stricken, the Supreme Court of North Carolina, as it always does in a death case, examined the record and found no error. The Court so stated in the opinion dismissing the appeal. The record which was before that Court contained all the evidence and all the rulings pertinent to the two questions raised in the State Court and raised again here. The record also contained the instructions of the Trial Judge with respect to the confessions, about which petitioners now complain. Petitioners applied for writ of certiorari to the United States Supreme Court, [fol. 283] and this was denied; other procedural steps were taken in the State Court, all of which are detailed in the findings of fact. It is difficult to believe that any impartial person would conclude in the light of the procedural history of this case that it clearly appears that petitioners were denied the substance of a fair trial.

Judge Williams, upon the evidence before him, found that petitioners had not been discriminated against in the composition of the jury, and the Supreme Court of North Carolina found no error in this ruling. This latter circumstance should have great weight in view of the consistent holding of that Court, beginning with the decision in *State v. Peoples*, 131 N. C., p. 784—decided more than forty years ago—" . . . that the intentional, arbitrary and systematic exclusion of any portion of the population from jury service, grand or petit, on account of race, color, creed or national origin, is at variance with the common law and cannot stand." And that Court has stood ready to reverse a contrary ruling of the trial Court when the evidence produced clearly showed that the trial Court's conclusion was not supported by the evidence. The petitioners say, though, that their appeal was not considered by the Supreme Court, but was dismissed because their counsel were one day late in serving their case on appeal. True, the appeal was dismissed, but we may believe the Court was speaking the truth in saying in the per curiam opinion: "We have carefully examined the record filed in this case and find no error therein . . . the judgment of the lower Court is affirmed and the appeal dismissed".

It is true that there was evidence presented which permitted an inference that the jury box contained a smaller



percentage of educationally qualified negroes than that of the whites, but there was no basis for a comparison of the [fol. 284] two races from the standpoint of moral character, which under North Carolina law is also an essential requirement for those deemed qualified to serve as jurors. While under the evidence an inference of discrimination might be drawn, such showing is not sufficient to justify declaring the trial in the State Court void. As stated by the North Carolina Supreme Court in *State v. Brown*, 233 N. C., p. 202: "It rests only in imagination or conjecture, the defendant must show prejudice other than guess or surmise before any relief could be granted on any such gossamer or attenuated ground". Charging exclusion of negroes on account of race does not make it so. The burden rests upon the petitioners to prove it and in the absence of proof of corruption the law presumes that the officials to whom the responsibility is committed faithfully performed their duty. *State v. Brown, Supra*. Every official who had a hand in composing the jury list stated under oath that no person's name was excluded because of race, and the other evidence does not show circumstantially that they testified falsely. But the petitioners complain because, as they assert, the evidence shows that the names were chosen solely from the voting lists rather than from tax lists and other sources. In absence of any clear proof that such was done as a part of a scheme to exclude negroes on account of race, they are entitled to no relief on this account, even if the fact is as they claim. In the *Brown* case, cited above, the argument was advanced that the jury was illegally composed because the names were taken solely from the tax lists while the applicable statute provided for use of such lists and the inclusion of "names who do not appear upon the tax lists, who are residents of the County and over twenty-one years of age". The Supreme Court of North Carolina rejected the contention with this comment: "... it is thoroughly settled by our decisions that the provisions of the statute now in focus are directory [fol. 285] and not mandatory, in the absence of proof of bad faith or corruption on the part of the officers charged with the duty of selecting the jury list". So it seems that even though the voting lists were exclusively used in obtaining the names for the jury box, this alone would not constitute

failure to observe the statute and, therefore, discrimination in the selection of the names. Proof is required. Both the North Carolina trial Court and the North Carolina Supreme Court held that there was no proof of discrimination, and this conclusion is in accord with my own.

There is even less basis for the petitioners' position with respect to the confessions. It seems rather clear that this position is not available to the petitioners in this proceeding. Numerous cases, in addition to those cited above, hold that a habeas corpus proceeding may not be used to correct errors committed in the trial Court which may be reviewed on appeal. The authorities cited by petitioners do not persuade me to a contrary view. But even if the position is available the petitioners failed to substantiate it. In their brief, counsel state: "... petitioner contends, and, of course, the police officers denied, that he was put in extreme fear of bodily harm". The matter might as well be phrased: The State contended and, of course, the defendants denied, that the confessions were freely and voluntarily made to the officers. Each of the participating officers stated that there was no force or coercion used, no threat made, no hope of reward suggested, and that each of the petitioners made his confession voluntarily. It may be that on occasion an officer will extort a confession and then color his testimony to make the contrary appear; no doubt such thing has happened; on the other hand, it is well known that many a defendant has voluntarily confessed and later, [fol. 286] when face to face with the consequences, has claimed that the confession was unlawfully obtained. Besides, the testimony of the officers is borne out by the other evidence, notably the testimony of the witness who talked with the petitioners while they were under observation at the State Hospital for the Insane, where they obviously were removed from any possible fear of the officers and were in a friendly and reassuring atmosphere. In addition, the confessions were made on several other occasions and never denied until petitioners were called at the trial in an effort to prove their point and escape punishment. Other evidence in the case very strongly corroborated the State's charges and the integrity of the confessions.

The position is taken that the confessions were involun-

tary because the petitioners were taken and held a few days without warrant. Under North Carolina law the officers had a legal right to arrest without warrant. As pointed out by petitioners' counsel, the crime was "a particularly atrocious one and aroused much feeling in the community". The officers knew that a felony had been committed, and their information was sufficient to afford reasonable ground for the belief that the petitioners committed it. It was natural for them to believe that the suspects might escape unless immediately arrested. Under North Carolina General Statutes, Sec. 15-41, the officers were not required to obtain warrants, as this formality in such situations is dispensed with in the interest of the effective enforcement of the law. It does not appear that the petitioners were held an undue length of time before the issuance of warrants, but even so, each petitioner made a confession before he was even put in prison and within minutes after being arrested. Neither the length of time held without warrants, nor the treatment they received, [fol. 287], brought about the confessions; they were immediately and voluntarily given, and reiterated several times thereafter. The trial Judge, and the Supreme Court of North Carolina had no doubt concerning the lawfulness and competency of the confessions, and neither have I.

Another contention of petitioners is that the trial Judge incorrectly charged the jury as to the consideration to be given the confessions which were admitted over petitioners' objections. The handling of the master was in accord with North Carolina procedure, and the Supreme Court of North Carolina found no error. In addition, I am of the opinion that the correctness of the charge may not be reviewed in this proceeding.

Lastly, the petitioners lay considerable stress on the fact that, as they insist, the trial was not reviewed because the case on appeal was served one day late, and they take the position, in effect, that with two lives at stake this formality should have been overlooked. There is nothing to the position. In the first place, the Supreme Court reviewed the record and found no error. But even if this were not true, the petitioners cannot complain. In *Andrews v. Swartz*, 156 U. S., p. 275, the Supreme Court, quoting from

*McKane v. Durston*, 153 U. S., p. 687, said: "An appeal from a judgment of conviction is not a matter of right, independently of constitutional or statutory provisions allowing such appeal . . . It is wholly within the discretion of the State to allow or not to allow such a review . . . and whether an appeal should be allowed, and if so, under what circumstances or on what conditions are matters for each State to determine for itself."

My conclusion, therefore, is that the petitioners have had a perfectly fair and impartial trial, in accordance with law and constitutional provisions, that the writ should be vacated because not available to petitioners on the procedural history, and if so, the petitioners are not entitled [fol. 288] to discharge because they have failed to substantiate the charges made.

An order vacating the writ and dismissing the petition has been entered

This July 12, 1951.

Don Gilliam, United States District Judge.

Addenda: Two other cases decided by our Court of Circuit Appeals seem also to support the conclusion reached above. These are: *Stonebreaker v. Smith*, 163 Fed. 2nd, 498; and *Jerry Adkins v. W. Frank Smith*, decided April 10, 1951.

Don Gilliam, United States District Judge.

[fols. 289-292] [File endorsement omitted]

[Title omitted]

ORDER—Filed July 14, 1951

Upon the facts found by the Court and filed separately, and in accordance with the conclusions of law arising thereon, It Is Ordered and Decreed:

1. That the writ of habeas corpus heretofore issued be vacated, and the petition dismissed.
2. That the petitioners be and they are hereby remanded to the respondent and the North Carolina authorities for



further proceedings under the judgment of the Superior Court of North Carolina, and in accordance with its provisions.

3. That the stay of execution under the State Court judgment heretofore entered be and it is hereby vacated.

4. That a certified copy of this Order under the seal of the Court be served by the United States Marshal, or one of his deputies, upon the respondent as his authority for proceeding under the judgment of the State Court.

This 13th day of July, 1951.

Don Gilliam, United States District Judge.

Received this writ 7/16/51 at Raleigh, N. C. & executed it on 7/16/51 at N. C. Central Prison, Raleigh, N. C. by serv. & delivering a copy to J. B. Dellinger acting Warden in the absence of Joseph P. Crawford.

Ford S. Worthy, U.S. Marshal. By L. L. Jackson, Deputy.

Fee 2.00.

[fols. 293-296] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

CERTIFICATE OF PROBABLE CAUSE—Filed July 18, 1951

This matter coming on before the undersigned upon application by Bennie Daniels and Lloyd Ray Daniels, petitioners in the above entitled matter, through their counsel, for a Certificate of Probable Cause in the above entitled matter; and it appearing to the Court;

1. That on the 2nd day of June, 1950, petitioners, filed a petition for writ of habeas corpus in the said matter, and pursuant to return made by respondent therein, said writ was issued.

2. That on the 13th day of July, 1951, the Court issued an order vacating and discharging said writ, for that the Court

is of the opinion, as contended by counsel for respondent, that the Court, as a matter of law, has no jurisdiction to entertain and pass upon the merits of said matter.

3. That said matter, as well as the discharge and vacation of the writ heretofore issued, involves a serious question of law, which this Court, despite the diligence of counsel for petitioners, counsel for respondent and the Court, cannot, upon the state of the law, satisfactorily and conclusively resolve.

4. That the instant matter involves the lives of the petitioners, and that this fact, together with the serious question of law involved, as hereinbefore stated, warrants and justifies an allowance to petitioners of an appeal from the judgment entered by this Court.

It is therefore ordered that petitioners are hereby allowed to appeal their cause to the United States Court of Appeals for the Fourth Circuit, in conformity to the rules of procedure in such cases made and provided, and that the instant certificate shall serve as the Certificate of Probable Cause required by law.

This 17th day of July, 1951.

Don Gilliam, Judge, United States District Court,  
Eastern District of North Carolina.

[fol. 297] [Stamp:] Filed Dec. 21, 1950. A. Hand  
James, Clerk, U. S. District Court. E. Dist. No. Car.

RESPONDENT'S EXHIBIT 2-A

STATE HOSPITAL AT GOLDSBORO

Clinical Notes

Name: Lloyd Ray Daniels. Register Number 21222

May 13, 1949.

*Interview with a white man from Greenville, N. C.: who states that he has known patient for the past eight or ten years.*

He states that patient was never formerly in trouble, having always been a good natured, law-abiding, hard

working youngster. He is the only boy of thirteen children. He states that the home "is a low grade type", his mother having married one man who apparently left her. Four men are the fathers of her thirteen children, eleven of whom have illegitimate children themselves.

He states that patient never cared for attending school and perhaps has very little education. He added, however, that patient was alert and willing to learn; that he could remove the parts of a plow and place them back without any difficulties, and that he could readily carry out instructions when they were given to him. He claims that patient was ill with a seizure or something approximately two years ago when he appeared listless and was seemingly unconscious, a taxi driver having carried him home from a show in Greenville, N. C.

This white man, after talking with patient at the Criminal Building, ask- that Interviewer sit in and have patient repeat what he had just heard him say. Patient calmly related the following:

He claims that he got up with Bennie Daniels and Bennie's brother on Saturday afternoon before the murder that night. They drank one pint of liquor and later drank some beer. Lloyd Ray knowing that he only had twenty-five cents in his pocket, advised these boys that he could not go with them. Bennie advised him to leave everything to him, advising that he would look after all the incidentals. It seems that patient repeatedly attempted to explain that he could not go with them but after their insisting he always did so. Bennie bought a new knife before their getting in a taxi near the bus station. They rode approximately six miles from Greenville to a side road near which were three tobacco barns. The taxi was ordered to circle around and apparently come back on the road. Lloyd Ray sat to the right of the driver, Bennie being directly behind him in the back seat. After getting off the road, near the tobacco barns, Bennie surrounded the driver with out-stretched arms, the sharp knife facing his throat. Lloyd Ray, realizing what was happening, again stated that he did not wish to follow Bennie. The driver's throat was apparently cut before they got him on the left side of the car, where Lloyd Ray was knocked down by the driver.

[fol. 298] Lloyd Ray states that he started to run but was immediately tripped by Bennie, who explained what had happened, advising that patient was then as guilty as he. Neither one could deny what they had already done.

Lloyd Ray admits that he used tobacco sticks on the driver's body. He claims that it was then around eleven o'clock. They reached his mother's home about twelve o'clock midnight. They apparently remained there until two A. M., when it was claimed that they went back to the tobacco barns, then returned home where they slept until early morning when they got up and played marbles in the yard until ten A. M.

Lloyd Ray claims that he would have never done such a thing had it not been for Bennie who led him astray this particular night.

This white man states that the tobacco barn was bloody inside where they apparently tried to hang the driver, but hearing his voice afterwards, it is assumed that they took him from the hanging position and dragged him outside and beat his head approximately four inches in the earth. Bennie and Lloyd Ray's clothes were bloody in front as if they held the driver up and attempted to carry him in their arms. Their clothes were found the following morning at Lloyd Ray's home. No one knew about the incident until Lloyd Ray's sister, who is a maid for someone near by, advised that she could not go to work that day because of having to wash Lloyd Ray's and Bennie's clothes. Upon immediate investigation, the clothes were found but the two boys were not located immediately.

Lloyd Ray was found at his girl friend's house about two A.M. the following Monday morning. Bennie came to his first cousin's house the following Tuesday morning and those living in the house informed this white man of Bennie's presence. The law "surrounded the house" and immediately took him into custody. It seems that these boys readily informed the Sheriff of what had happened and while being carried to Raleigh, they laughed at each other about the incident, advising that one was as guilty as the other.

G. M. Johnson.



(Here follow 2 Photolithographs, side folios 299, 300)



(100A)

## PETITIONERS' EXHIBIT 6

## CERTIFIED CERTIFICATE OF BIRTH

NORTH CAROLINA

PITT COUNTY

FILED

## 1. PLACE OF BIRTH—

County PittTownship Greenville

DEC 21 1950

District No. 74 5974 Certificate No. 114

City

No. U. S. DISTRICT COURT

(If birth occurred in a hospital or institution give its name instead of street and number)

2. FULL NAME OF CHILD Loia Ray Daniel

3. Sex <u>M</u>	4. Twin, triplet, or other <u>None</u>	5. Number, in order of birth <u>1</u>	6. Forename <u>Full term</u>	7. Are parents married? <u>yes</u>	8. Date of birth <u>Sept. 25</u> 19 <u>31</u> (Month, day, year)
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## 9. Full name

FATHER  
Rufus Daniel

## 10. Full maiden name

MOTHER  
Alice Daniel11. Residence (usual place of abode)  
(If non-resident, give place and State) R.F.D. Greenville12. Residence (usual place of abode)  
(If non-resident, give place and State) Greenville13. Color or race C 14. Age at last birthday 35 (years)15. Color or race C 16. Age at last birthday 32 (years)17. Birthplace (city or place)  
(State or country) Pitt Co. N.C.18. Birthplace (city or place)  
(State or country) Pitt Co. N. C.19. Trade, profession, or particular kind of work done, as spinner, sawyer, bookkeeper, etc. Farming20. Trade, profession, or particular kind of work done, as housekeeper, typist, nurse, clerk, etc. Domestic

21. Industry or business in which work was done, as silk mill, sawmill, bank, etc.

22. Industry or business in which work was done, as oyster house, lawyer's office, silk mill, etc.

23. Date (month and year) last engaged in this work

24. Date (month and year) last engaged in this work

25. Total time (years) spent in this work

26. Total time (years) spent in this work

27. Number of children of this mother (at time of this birth and including this child) (c) Stillborn (b) Born alive but now dead (a) Born alive and now living

## CERTIFICATE OF ATTENDING PHYSICIAN OR MIDWIFE

I hereby certify that I attended the birth of this child, who was born alive at 11-25 on the date above stated.  
(Born alive or stillborn){ WHEN THERE WAS NO ATTENDING PHYSICIAN  
or MIDWIFE, THEN THE FATHER, HOUSEHOLDER,  
ETC., SHOULD MAKE THIS RETURN.(Signed) Nora Hoise M. D.Given name added from  
a supplemental report

(Date of)

Address Greenville,

REGISTRAR

Filed 11-25 19 31 Ward Moore

REGISTRAR

## CERTIFICATE OF REGISTER OF DEEDS

STATE OF NORTH CAROLINA,  
PITT COUNTY.I, C. P. GaskinsRegister of Deeds and Legal Custodian of the  
Records of Vital Statistics for Pitt County, North Carolina, certify that the foregoing is a true and correct copy of the Birth Certificate on file in this  
office, recorded in Volume No. 18 at page No. 1263 Vital Statistics Records.WITNESS my hand and official seal this 31 day of May 19 49

(SEAL)

C. P. Gaskins  
By Blair Cox Whiles, Dep.  
Register of Deeds



(100B).

## PETITIONERS' EXHIBIT 7

S.A.B. Form No. 15-Bureau Vital Stat. Form 1930

930 WALKER H. D. Certification

Edwards

Daughton Co., Raleigh-193613-1222

## North Carolina State Board of Health

## BUREAU OF VITAL STATISTICS

## STANDARD CERTIFICATE OF BIRTH

FILED

1. PLACE OF BIRTH—  
County Pitt DEC. 21 1950 Registration No. 74-5274 Certificate No. 138  
Township Greenville A. RAND JAMES, CLERK  
City Greenville No. U. S. DISTRICT COURT  
(If birth occurred in an institution, give its name instead of street and number) Ward

2. FULL NAME OF CHILD Bennie Daniel If child is not yet named, make supplemental report, as directed

3. Sex M 4. Twin, triplet, other None 5. Premature No 6. Are parents married? Yes 7. Date of birth Nov. 1, 1931  
(Month, day, year)

8. Full name DAVID DANIEL 9. Full name RACCIE HART  
10. Residence (usual place of abode) R. 3, Greenville 11. Residence (usual place of abode) R. 3, Greenville  
(If non-resident, give place and State)

12. Color or race C 13. Age at last birthday 27 (years) 14. Color or race C 15. Age at last birthday 24 (years)  
16. Birthplace (city or place) Pitt Co., N. C. 17. Birthplace (city or place) Pitt Co., N. C.  
(State or country)

18. Trade, profession, or particular kind of work done, as spinner, sawyer, bookkeeper, etc. Farming 19. Trade, profession, or particular kind of work done, as housekeeper, typist, nurse, clerk, etc. Domestic  
20. Industry or business in which work was done, as silk mill, sawmill, bank, etc. None 21. Industry or business in which work was done, as own home, lawyer's office, silk mill, etc. None  
22. Date (month and year) last engaged in this work None 23. Date (month and year) last engaged in this work None  
24. Total time (years) spent in this work None 25. Total time (years) spent in this work None

26. Number of children of this mother (at time of this birth and including this child) (a) Born alive and now living 1 (b) Born alive but now dead 0 (c) Stillborn 0

## CERTIFICATE OF ATTENDING PHYSICIAN OR MIDWIFE

I hereby certify that I attended the birth of this child, who was Born alive at 1 A. M. on the date above stated.  
(Born alive or stillborn)

WHEN THERE WAS NO ATTENDING PHYSICIAN OR MIDWIFE, THEN THE FATHER, HOUSEHOLDER, ETC., SHOULD MAKE THIS RETURN.

(Signed) Nora House, M.D.

Given name added from a supplemental report (Date of)

Address Greenville

REGISTRAR

Filed 11-12-31

Ward Moore

REGISTRAR

STATE OF NORTH CAROLINA,

CERTIFICATE OF REGISTER OF DEEDS

PITT COUNTY.

I, C. F. GaskinsRegister of Deeds for Pitt County.

North Carolina, certify that the foregoing is a true and correct copy of the Birth Certificate on file in this office, recorded in Volume No. 18

at page No. 1257 Vital Statistics Records.

WITNESS my hand and official seal this 31st day of May, 1951.

(S E A L)

C. F. Gaskins  
Register of Deeds

(NOTE) Chapter 118, Sub-Chapter 2, Section 7109 of the Consolidated Statutes of North Carolina designates the Register of Deeds of each County as the legal custodian of Vital Statistics Records.

M-9-48-193613



[fol. 301]

## PETITIONERS' EXHIBIT 6A THROUGH 6U

## Ayden Township

## On Jury Scroll

Nellie Clemons	R
William Evans	R T 1414
J. W. Ormond	R
Mrs. J. W. Ormond	R
Harvey Phillips	R T 1626
H. R. Reeves	R T 1648
John Thrower	R
Willie Cox	T 1345 RW
J. L. Smith	T 1693 RW*
W. Ray Smith	R 1702 RW
Paul Williams	T 1763 RW
Charlie Williams	T 1749 RW
David Braxton	T 1252 (also white—T 86) RW
Total number of Negroes on Tax List	589

## Not on Jury Scroll

Nancy Becton	R
Mazella Burney	R
Lillie C. Evans	R
Wright D. Hardy	R
Roosevelt Hardy	R
Mrs. Roosevelt Hardy	R
J. D. Lennon	R
Sarah Reeves	R
Fred Shepherd	R
Sarah Shepherd	R

\* Actually J. Q. Smith on R book, but written in such a way that the Q could easily be read "L".

Filed Dec. 21, 1950, A. Hand James, Clerk, U. S. District Court, E. Dist. No. Car.

[fol. 302]

## Beaver Dam Township

## On Jury Scroll

Total number of Negroes on Tax List	185
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## Not on Jury Scroll

[fol. 303]

## Belvoir Township

## On Jury Scroll

George Wimberly	T 360
Total number of Negroes on Tax List	116

## Not on Jury Scroll

[fol 304]

## Bethel Township

## On Jury Scroll

J. B. Chance	R T 581
Salonia Armistead McNair	R T 753
Total Number of Negroes on Tax List	352

## Not on Jury Scroll

Mrs. J. B. Chance	R
Rev. J. E. V. Wilson	R

[fol. 305]

## Carolina Township

## On Jury Scroll

Total number of Negroes on Tax List	236
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## Not on Jury Scroll

[fol. 306]

## Chicod Township (No. 1)

## On Jury Scroll

Wyatt Pollard	T 1420 (white T 803) RW
Total number of Negroes on Tax List (for Chicod Township as a whole)	396

## Not on Jury Scroll

T. H. Howard	R
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[fol. 307]

## Chicod Township (No. 2)

## On-Jury Scroll

## Not on Jury Scroll

Charlie Hardee	T 1281 RW
Elbert Stokes	T 1469 RW
John Williams	T 1507 RW

[fol. 308]

## Chicod Township (No. 3)

## On Jury Scroll

## Not on Jury Scroll

Ed A. Chapman	R T 1174
Clifton Coward	RW T 1191 (white—T 210)

[fol. 309]

## Chicod Township (No. 4)

## On Jury Scroll

## Not on Jury Scroll

Henry Smith	T 1453 (white—T 890) RW
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[fol. 310]

## Falkland Township

## On Jury Scroll

## Not on Jury Scroll

Nelson Hopkins	R T 448	Mamie Anderson	R
		J. T. Bell	R
		Andrew Bell	R
		James Hopkins	R

Total number of Negroes on Tax List..... 181

[fol. 311]

## Farmville Township

## On-Jury Scroll

## Not on Scroll

H. W. Baker	R	C. J. Artis	R
J. B. Baker	R	John E. Artis	R
C. Walter Bullock	R	Marie Artis	R
H. B. Bynum	R	M. F. Artis	R
Mrs. Lang Davis	R	L. T. Artis	R
Will U. Davis	R T 1177	Mildred Artis	R
Azell Edwards	R T 1219	Lucy Baker	R
Bessie B. Edwards	R T 1221-1222?	I. S. Bennett	R
Wright Edwards	R T 1225	Joseph Blount	R
Lula Ellis	R	Madeline Blount	R
Mrs. Sula Exum	R T 1232	O. L. Blount	R
Charlie Fields	R T 1237	R. P. Blount	R
J. Herbert Joyner	R	Madeline L. Blount	R
Joe R. Joyner	R	Frank R. Brewington	R
Will C. Joyner	R T 1378	George Burney	R
Lena Moye Joyner	R T 1371	Moses Burton	R
George Lang	R T 1417	Inez Chestnut	R
J. H. May	R	L. H. Chestnut	R
Joseph May	R T 1426	J. R. Dupree	R
T. H. McKinney	R	Mattie Dupree	R
Clifton D. Parker	R (T 1481—no "D.")	W. M. Faison	R
Martha L. Parker	R	Bennie Goreham	R
Eddie Redwood	R	J. Archibald Joyner	R
Ada A. Suggs	R	Louis King	R
C. M. Suggs	R	C. E. Knight	R

On Jury Scroll

Not on Scroll

H. B. Suggs	R T 1545	Mrs. C. E. Knight	R
Mrs. H. B. Suggs	R	Lawrence Mock	R
James W. Taylor	R T 1558	D. T. Phillips	R
Agnes Taylor	R	F. E. Rountree	R
Celia Turnage	R	Christine Walker	R
Paul Gay	RW T 1260 (also white T 343)	Lyman Wooten	R
Willie Johnson	RW (Willie Johnson, Jr.—T 1346)		
William Jones	RW T 1359		
Mary Parker	RW T 1480		
Total number of Negroes on Tax List			630

[fol. 312]

Fountain Township

On Jury Scroll

Not on Jury Scroll

W. B. Moore	R	Atkinson, Walter	R
C. A. Whitfield	R T 430	Hemby, S. E.	R
		Whitfield, J. A.	R
		Whitfield, Beatrice	R

Total number of Negroes on Tax List ..... 121

[fol. 313]

Greenville Township (General)

On Jury Scroll

J. T. Brown	T 3568 (white T 404)
Jordan Daniel	T 3703 (white T 721)

[fol. 314]

Greenville Township (No. 1)

On Jury Scroll

Not on Jury Scroll

Artis, I. A.	R T 340	Allen, Maggie B.	R
Artis, Lillian	R	Bartlett, M. L.	R
Allen, Travis M.	R	Bartlett, Quinn	R
Bradley, Madeline	R	Battle, J. A.	R
Davis, James Coy	R	Battle, Della May	R
Daniel, Daisy L.	R	Battle, Esosabeth	R
Davenport, V. H.	R T 376	Bradley, Lena O.	R
Elliott, Edmond	R T 388	Davenport, Selina Q.	R
Elliott, Thelma	R	Depree, Dennis	R T 3753
Flanagan, Charlotte	R	Dupree, Etta	R
Garrett, Mamie G.	R	Flanagan, W. E.	R
Graves, Edna B.	R	Nimmo, J. A.	R
Gore, Daniel	R	Thompson, Mildred G.	R
Grimes, James W.	R T 3918	Wilson, Douglas	R
Little, Eliza J.	R T 4247		
Lawrence, J. C.	R		
Maye, J. W.	R T 4276		
McLawhorn, H. J.	R		
Phillips, Sallie A.	R T 4441		
Spence, Addie Foreman	R		
Taylor, Lillie R.	R T 4650		
Whitfield, G. R.	R T 4785		
Brinkley, Thos. B.	T 3543 RW		

Total number of Negroes in Tax List (for Greenville Township as a whole) ..... 1,537

[fol. 315]

## Greenville Township (No. 2)

## On Jury Scroll

Bizzell, John H.	R
Cherry, Will	R
House, Bernice	R
Johnson, R. E.	R
Lang, Selena S.	R T 4189
Lewis, Matthew	R T 4235
Morris, Clifton	R
McGlone, Chas. C.	R
Wooten, J. H.	R
Davenport, W. H.	T 3706 RW

## Not on Jury Scroll

Capehart, Wm.	R
Capehart, Amelia	R
Carraway, Halse M.	R
McGlone, Elizabeth C.	R
Norcutt, Wiley P.	R
Staton, E. N.	R
Taft, J. B.	R
Taft, Lola	R

[fol. 316]

## Greenville Township (No. 3)

## On Jury Scroll

Is. ael Atlama	R T 3375
Jas. A. Adams, Jr	R T 4890
J. I. Baker	R
Howard Barnhill	R
Ertie Blackwell	R
Ruth Bynum	R
Chas. Z. Davis	R T 3712
Elizabeth Davis	R T 3710
Joseph Donaldson	R T 3733
Earnest Dupree	R T 3747
Thaddeus Forbes	R T 3837
Louis G. Forbes	R
Hall, Mamie Paige	R
Evelyn Harris	R
F. J. Jinkens	R T 4084
Jessie L. King	R T 4182
Gertrude Latham	R
Ed Lee Latham	R T 4221
C. G. Mabry	R
Anna O. Mason	R
Willie Miller	R
Washington Miller	R
H. R. Miller	R
Thelma Moore	R
P. W. Moore	R T 4302
William Myers	R
Louise McConnell	R
Alan E. Murell	R
Frank Norris	R
Sarah Page	R T 4398
Robert Parker	R
Henry Payton	R T 4410
Roy P. Payton	R T 4413
R. M. Phillips	R
Donovan Phillips	R T 4442
Sudie Staton	R
Henry Turnage	R
Walter West	R
Sylvester Wilson	R T 4848
Willie Wilkins	R T 4797
L. W. Wooten	R T 4882
Jimmie Elks	T 3785 RW
Willie James Hester	R T 4019
Joyner, R. L.	T 4165 WR
Lester Jones	T 4124 WR

## Not on Jury Scroll

Belle Mae Atkinson	R
Gerry Barnes	R
Jno. Frank Barrett	R
Bell, Grant	R
Doris Bell	R
Rosa E. Bell	R
Lucinda Daniel	R
Lillian Donaldson	R
Charles M. Epps	R
Elizabeth Kearney	R
Mrs. Olga Myers	R
Chestie McKnight	R
Beatrice P. Newell	R
Evelyn Norris	R
Flora A. Phillips	R
Sudie Rasbury	R
Eether May Rich	R
Lucile Rich	R
Sylvia Smith	R
Vivian Shiver	R
Hilda Thompson	R
Minnie P. Turner	R
Irene Wilkinson	R



[fol. 317]

## Greenville Township (No. 4)

## On Jury Scroll

Lemuel Clements R  
S. W. Croom R T 3680

J. H. Donaldson R  
William Ebron R T 3772  
Robert Grimes R T 3915  
John Henry Harris R T 3966  
George Lee Jenkins R T 4078  
Hillard Murill R T 4344  
S. I. Saulter R  
Charles A. Shiver R  
J. B. Webster R  
Anthony Wilkes R T 4796  
Willie Wilkins R T 4797  
Robert L. Shiver R  
Herbert Whithard R T 4768  
L. D. Taylor RW T 4653  
Richard Anderson RW T 3396 (white T 72)  
LeRoy Barnes R T 3442  
Daniel Early RW T 3755  
Wm. S. Harris RW T 3985 (white T 1313)  
Charlie Harris RW T 3981  
LeRoy Hardee RW T 3932  
Jessie L. King R  
(also in Greenville No. 3)  
J. S. Maultsby R  
Jesse Smith RW T 4546 (white T 2633)  
George E. Merritt R T 4278  
Sam Mayo RW T 4277

## Not on Jury Scroll

Julis Best R  
Laura Carr R  
(Two Laura Carrs on Tax  
book with different middle  
initials)  
Alonzo Cherry R  
Nena Cherry R  
Portia Dudley R  
Graye, Lottya R  
Lillian Hardee R  
Catherine Harris R  
Thelma Hawkins R  
Dolly A. Keyes R  
Lavania Latham R  
W. Virginia Laughinghouse R  
Cora Belle Miller R  
Lillian Murill R  
Mildred Purvis R  
Rev. O. James Rooks R  
Sadie P. Rooks R  
Jeannette J. Sillo R  
Annie L. Streeter R  
Louis Vince R  
Mabel Wilson R

[fol. 318]

## Grifton Precinct

## On Jury Scroll

Arthur Mills T 1570 RW  
Robert Moore T 1582 RW  
\*M. C. Dixon T 1379 (Ayden)  
\*Duggins, Isaac T 6034 (Swift Creek)  
Gaskins, Walter RW T 670  
White, James RW T 810

\*Added to end of list out of order in jury scroll book.

## Not on Jury Scroll

Duffie Abbott R T 1197

[fol. 319]

## Pactolus Township

## On Jury Scroll

Total number of Negroes on Tax List

## Not on Jury Scroll

126

[fol. 320]

## Swift Creek Township

## On Jury Scroll

Gardner, William T 662 RW  
Smith, Jesse T 775 RW

Total number of Negroes on Tax List

## Not on Jury Scroll

259

[fol. 321]

On Jury Scroll

Winterville Township

Not on Jury Scroll

S. P. Barrett R  
 P. R. Canady R  
 O. W. Gardner R T 762  
 W. H. Robinson R T 893  
 Worthington, Lester RW T 975  
 Total Number of Negroes on Tax List

342

[fol. 322] Clerk's Certificate to foregoing transcript  
 omitted in printing.

[fol. a] IN UNITED STATES COURT OF APPEALS FOR THE  
 FOURTH CIRCUIT

## APPENDIX TO APPELLANT'S BRIEF

[fol. 1] J. D. JOYNER being first duly sworn, testified as  
 follows:

Direct examination.

By Mr. Rogge:

(p.13) Q. Will you state your name, please?

A. J. D. Joyner.

Q. Where do you live?

(p.14) A. Farmville, North Carolina.

Q. Is that in Pitt County?

A. It is.

Q. Have you held office in Pitt County?

A. I have.

Q. What office have you held?

A. Register of Deeds and also tax supervisor and collector in Pitt County.

Q. As Register of Deeds any ex-officio office?

A. At that time I was ex-officio clerk to the board of county commissioners.

Q. Do you have the tax list for 1946-49?

A. No sir.

Q. You went out of office when?

A. December 1, 1949. \* \* \*

(p.15) Q. How were those tax lists kept while you were there? Did you have segregation as between white and negro Tax payers?

A. Yes, sir.

Q. You had white tax payers on one list?

A. Yes, sir.

Q. And negro tax payers on another?

A. Yes, sir. . . .

(p. 16) Q. You were clerk ex-officio of the board of county commissioners from when to when?

A. September 1, 1946 to July 15, I believe it was, of '47.

Q. Can you tell us a little about Pitt County? Is it divided into townships?

A. Yes, sir.

Q. How many townships in Pitt County?

A. Thirteen.

Q. Is it also divided into districts?

A. Commissioners' districts, yes.

Q. How many of those?

A. Five.

Q. How many commissioners are there?

A. Five.

The Court: That division of the county into Commissioners' districts doesn't show up in the tax list?

A. No, sir.

The Court: The tax list is for the county as a unit and commissioner's district is for the selection of the commissioner?

A. Yes, sir.

Q. As ex-officio clerk of the board of county commissioners (p.17) what were your duties?

A. To be present at meetings of county commissioners and make record of actions taken.

[fol. 2] Q. Did you have anything to do with drawing list for juries in 1947?

A. Yes, sir.

Q. And tell us just what you did?

A. To the best of my recollection the first meeting in June the county commissioners instructed.

Q. June of '47?

A. Yes, sir. County Commissioners instructed me to prepare for them a jury list, to refer to the tax books and county registration book or any other source to get a list

before them of the persons in the county twenty-one years of age or over to comprise the jury list. \* \* \*

(p.20) Q. Let's find out what you actually did. You are now getting ready to prepare the list for the board of county commissioners?

A. Yes, sir.

Q. And did you go to the county registration files?

A. The best of my recollection we went first to the tax list and from there to the registration books.

Q. Did you consult any other sources except the tax list and registration books?

A. Not to my recollection.

Q. These are the records of Pitt County?

A. Yes, sir.

Q. The tax list, as you have told us, is divided between white and negro taxpayers?

(p.21) A. Yes, and also by townships.

Q. Tell us what you did? Did you make up one complete list for the county, or did you do it by districts, or did you do it by townships?

A. To the best of my recollection it was made up by townships.

Q. Sometime- there are more than one township in a district?

A. Which district are you referring to?

Q. In Pitt County I understand there are five districts and each commissioner has a district?

A. The registration books are divided into electoral districts which doesn't necessarily conform to commissioner's district.

Q. I want to get at what you did?

A. I would like to clarify one statement I made.

Q. Please do.

A. The original list made up from the registration book and checked against the tax books and list made up were not according to electoral district and didn't necessarily conform to townships because each township could have had more than one electoral district.

Q. You went to the registration list first because you thought that was in accordance with the change in the statute?



A. That's correct.

Q. Tell us what you did with respect to the registration list of registered voters?

(p.22) A. There was a copy made of the list.

Q. Of the registered voters in Pitt County?

A. Yes, sir.

Q. Where is that copy and who keeps it?

A. County chairman of the board of elections has charge of it.

Q. Do you know his name?

A. J. H. Harrell.

Q. Did you go to Mr. Harrell?

A. I went to Mr. Harrell and obtained his permission to use the books.

[fol. 3] Q. You went to Mr. Harrell and asked him whether you could have access and make use of the county registration list for Pitt County?

A. Yes, sir.

Q. You were about to tell us how they were kept?

A. Registration books kept by election districts.

Q. How many of the election districts in Pitt County?

A. I couldn't say.

The Court: Isn't that a statewide practice?

A. I assume it is statewide practice. I know in this county and other counties I know about they have certain number of precincts and that is statewide.

Q. Now suppose you tell us exactly what you did with this registration list?

A. I had access to the registration books and had copy made (p. 23) of them insofar as the name and precinct in which the name was.

Q. You go up a list of names with the precincts?

A. Yes, sir.

Q. How did you get that?

A. Went through the books and had the young lady who typed out the list.

Q. Did you make copies at the time?

A. Best of my recollection it was made in duplicate.

Q. You had the young lady with a typewriter and you dictated the names with precinct and she typed them on a sheet of paper?

A. No, I wouldn't say that is the case. So far as me dictating it that's not the case. The book was turned over to her and she went through the books and copied the names.

The Court: All of them?

A. To the best of my knowledge she did.

Q. The Court: White and negro?

A. To the best of my knowledge she did.

Q. You told her, "I want you to copy all the names together with the precincts"?

A. Yes, sir.

Q. You now have a list of names. You recall how many pages?

A. No, sir.

Q. Was precinct written after the name?

A. Yes, sir.

Q. What is the next thing you do?

(p. 24) A. The next thing I got the precincts together according to the township they represent.

Q. When she got through with the precincts if she was in the middle of a page she stopped?

A. Yes, sir.

Q. What you ended up with was a list of names for each precinct taken from the registration book?

A. Yes, sir.

Q. What did you do with the list of names by precinct taken from the registration books?

A. Got them together by township and verified with the tax list in order to make certain that there were no names left off. That is that the tax list was complete insofar as that list was concerned. Do I make myself clear?

Q. No, I don't think I quite understand you. Did you add names to the list?

[fol. 4] A. If we found names on the tax list which were not on the registration list we did.

Q. Did you find names like that?

A. That's a difficult question to answer because I don't recollect. I don't recall adding or not adding. It was a mechanical job.

Q. You supervised the job?

A. Yes, sir.

(p. 29) Q. Went first to the names of white taxpayers because white came first. Starting off in the first township you have white list and as you complete the white list starting with the very next page is colored list and in verifying the list from the registration book they would have started in the front of the tax book, verifying the whites in the first township and then gone to the negroes in the first township against the corresponding townships of the registration books?

A. That would be the accepted procedure.

Q. Do you think that happened?

A. I am quite certain it did.

Q. When this was done what happened to the list of names that had been compiled pursuant to your instructions?

A. They were turned over to the commissioner insofar as the township related to their commissioner districts.

Q. Did you now collect the names by districts?

A. The list was at this point made up by townships and if one of the commissioners had three townships in his district he (p. 30) was given the list for those three townships to verify.

Q. In other words you knew which townships in his district?

A. That's correct.

Q. Are you the one who took this list to the different commissioners?

A. I gave it to them.

Q. Do you recall giving them these different lists of names?

A. Yes, sir.

Q. You remember about when that was?

A. No, I couldn't give the date.

Q. It would be some time after June, 1947?

A. Yes, sir.

Q. You know what happened to them thereafter?

A. After they went through them they returned them to me. They went through the lists and inspected them.

Q. Were you present at any subsequent meeting of any board of county commissioners where these lists were discussed, your personal knowledge of whatever happened to the list compiled under your supervision?

A. Yes. You are referring to the meeting in which they accepted the list.

Q. You have told us about getting up the list by township, went to the registration list and then to the tax list?

A. Yes, sir.

[fol. 5] Q. This all pursuant to your supervision and instructions?

A. Yes, sir.

(p. 31) Q. And then you took the list to the respective commissioners?

A. Yes, sir.

Q. Did you keep any copies of those lists?

A. Yes, sir.

Q. Do you have a copy of these lists now?

A. No, sir.

Q. You made up the original and duplicate?

A. At that time, yes.

Q. Can you tell us just how many copies you made?

A. To the best of my recollection there were two copies made, original and one copy.

Q. You mean one copy was made in addition to the original?

A. That's correct.

Q. Suppose we would like, as I would, a copy of this list you prepared. Is there a way I can get a copy?

A. There is a book in which the jury scrolls are kept, permanent record. One copy goes into the jury box and one copy in the book as complete record.

\* \* \* \* \*

(p. 32) Q. You mean the one you gave to the commissioners was finally (p. 33) returned to you?

A. Yes, sir.

Q. With various names stricken out?

A. Yes, sir.

Q. At what point of time was that returned to you? How long after you gave it to the respective commissioners?



A. Within a matter of a day or two, I don't recall.

Q. A day or two after you gave it to the commissioner he gave it back to you with the names he had stricken out?

A. Yes, sir.

(The Court recessed for fifteen minutes)

Q. We were right at the point where the list you had prepared you gave to the commissioners and the commissioners gave it back to you. Then what happened to it?

A. You are referring to the time I turned the list over to the commissioner?

Q. Yes.

A. The original list I prepared?

Q. Given by you to the commissioners and a day or two later given back to you by the commissioners. Then what happened to it?

A. After they had made deletion the list was rewritten leaving out the names they had seen fit to delete.

(p. 46) J. H. HARRELL, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Rogge:

Q. Will you please state your name?

A. J. H. Harrell.

Q. Your residence?

A. Greenville, North Carolina.

Q. Do you hold any public office?

A. Chairman of Pitt County Board of Elections.

Q. How large is that board?

A. Three-man board.

[fol. 6] (p. 47) Q. You are the chairman of it?

A. Yes, sir.

Q. And how long have you held that office?

A. Some over twelve years.

Q. You were there in 1946 and 1947?

A. Yes, sir.

Q. You have been subpoenaed to bring the registration lists from 1946 to 1949. Do you have those volumes here?

A. Yes, sir.

Q. Will you produce them?

A. Here they are.

Q. These volumes you have brought are the ones we have subpoenaed?

A. Yes, sir.

(p. 48) Q. Mr. Joyner told us these were kept by precinct?

A. Yes, sir.

Q. Is his statement correct?

A. Yes, sir.

Q. I take the first one on the list, Greenville No. 2 Precinct?

A. That's right. Greenville is divided into four precincts.

Q. I happened to pick the one that is Precinct 2 Greenville?

A. Yes, sir, the larger precincts some have larger books.

Q. Are the names copied in alphabetical order by precinct?

A. Yes, sir.

Q. I have picked at random to the "C". After the names there are two columns, one labeled "White" and one "Colored"?

A. That's right.

Q. And next following is the name, putting it in one column or the other?

A. Yes, sir.

Q. And on the page I happened to turn to there are how many names?

A. Seventeen.

Q. Of the names can you tell us how many white and how many colored?

A. One colored and sixteen whites according to the records.

Q. Let's turn to page C5 in the same book. How many names on that page?

A. Twenty-eight.

(p. 49) Q. And can you tell us how many white and how many negro?

A. Twenty-eight white. No colored.

Q. C6, there is a division between columns labelled white and colored?

A. Yes, sir.

Q. How many white and how many negroes?

A. Seven on that page and all white.

Q. The next page C7, can you give us the same information as to that page?

A. Twenty-six registered on that page and all white.

Q. Can you tell us whether you have any information anywhere showing how many white and how many negroes registered by precincts?

A. No, sir.

Q. There are apparently very few negroes registered on the pages we have examined?

[fol. 7] A. Yes, sir.

Q. And will that average hold true for the other pages in other volumes?

A. I don't know. I don't know whether the average will hold true or not, but the percentage is small.

(p. 51) W. W. SPEIGHT, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Moody:

Q. State your name and business?

A. W. W. Speit; an attorney of Greenville.

Q. How long?

A. I started in 1939, interrupted by the war years and resumed in 1946 and until now.

Q. Received your education where?

A. LLB: University of North Carolina. Undergraduate work at the University.

Q. Serve any state office?

A. Institute of Government doing criminal law research, and Attorney General law office.

(p.52) Q. What do you do now?

A. Practice law in Greenville, James and Speight.

Q. The record in the State Court shows you and another attorney were appointed at the March Term, 1949 Superior Court of Pitt County to defend the petitioners, Lloyd Ray Daniels and Bennie Daniels?

A. That's correct. I was appointed to defend Lloyd Ray Daniels, and Mr. R. P. Corey was appointed to defend Bennie Daniels.

Q. Do you remember when they were arraigned?

A. Yes, sir.

Q. Had you been appointed when they were arraigned?

A. Yes, sir.

Q. And entered pleas to the bill of indictment?

A. Yes, sir.

Q. The record shows you didn't move to quash.

Objection by petitioners. Objection overruled.

Mr. Rogge: Why previous counsel may or may not have done anything, why a lawyer didn't do something which I think under the circumstances should have been done—

A. I didn't move to quash because I knew the grand jury, most of the members personally, knew the foreman, and considered they would give fair consideration to the evidence.

(p. 54) Cross-examination of W. W. Speight.

By Mr. Rogge:

Q. This grand jury, Mr. Speight, that you were talking about had no negroes on it?

A. There were none on it.

Q. As a matter of fact you have never had a negro on a grand jury in Pitt County?

A. I don't know of any.

Q. And you have been practicing since 1939?

A. Yes, sir, but not in Pitt County.

[fol. 8] Q. How long have you been practicing in Pitt County?



A. January 1, 1947.

Q. Since that time there has been no negro on the grand jury in Pitt County?

A. Not to my knowledge.

S. M. UNDERWOOD, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Moody:

Q. You are Sam Underwood?

A. Yes, sir.

(p.55) Q. Where do you live?

A. Greenville, North Carolina.

Q. Your profession?

A. I am a lawyer.

Q. What position have you held with reference to Pitt County?

A. I served as county attorney.

Q. How long?

A. Mr. Moody, If I recall correctly I was appointed in September, 1946 and served through this month.

Redirect:

(p.68) Q. What was the system of the number of the grand jurors?

A. We have the staggering system in Pitt County. Nine are drawn at the first criminal term in August to serve for six months, and nine drawn at the first criminal term in January to serve six months. I beg your pardon, twelve months. So we have constantly a grand jury, eighteen members, nine with six months experience.

Q. Was that true of the grand jury at this time?

A. Yes, sir.

(p.69) Mr. Rogge: When you run through the total of twenty precincts the Judge reached in his finding No. 17) that the registration and poll books of 1946 containing list of persons over twenty-one years of age residing in the county who were qualified voters contained the names of 20,065 white persons and 423 negro persons. That is the Judge's computation of the nineteen witnesses I am calling to Your Honor's attention.

(p.70) H. L. ANDREWS, being first duly sworn, testified as follows:

Direct examination.

By Mr. Rogge:

Q. Will you state your name?

A. H. L. Andrews.

Q. Where do you live?

A. Pitt County, Greenville.

Q. Held any public office?

A. Pitt County tax collector.

Q. From when to when?

A. 1933 to 1946. Skipped a couple of years and been tax [fol. 9] collector since.

Q. You were tax collector in 1946?

A. Yes, sir.

(p 71) Q. I hand you volume "Tax Ledger 1946, Pitt County" and ask you can you identify this?

A. Yes, sir.

Q. What is it?

A. Tax book and levy 1946, White and colored.

Q. Is that divided by precincts?

(p.72) A. No, townships.

Q. How many townships in Pitt County?

A. Thirteen.

Q. Then this has thirteen divisions?

A. Yes, sir.

Q. The first division is for Beaverdam Township?

A. No, sir, Ayden.

Q. I take it that the first names would begin with Adams and the like, running through. Do you have any page numbers?

A. We go by ticket number. We don't go by page number.

Q. Running through the first, 1700 tickets.

A. 1196 is the white in Ayden Township.

Q. Running through 1196 from the first name "Abbott" and your last name "Yelverton", those are the first pages in the book?

A. Yes, sir.

Q. That is followed by a page that is what?

A. Late folks who come in to list taxes after the books are fixed up.

Q. And they get a page by themselves?

A. Yes, sir.

Q. Then you have several blank pages?

A. Yes, sir.

Q. You had one on which you put the people who came in late or moved in after you had made this up?

A. That's right.

(p.73) Q. Then three blank pages?

A. This page goes with the preceding book.

Q. So you have just two blank pages between the white and negro sections?

A. There are some names at the bottom of the page.

Q. What are they?

A. We left off here, 1196, and start at 1197.

Q. Are these also some late-comers?

A. No, sir, that is the colored in Ayden Township.

Q. How come you start near the bottom of the page?

A. Because 1196 was the other one and 1197 is the other.

Q. Since Yelverton was 1196, what about those extras you have in here?

A. I just told you.

Q. Your reason is since the last item on the page dealing with the white section was 1196 you start the negro section 1197, beginning over again alphabetically with the name Abbott?

A. Whatever it starts with.

Q. And on this it is Abbott?

A. Yes, sir.

[fol. 10] Q. And following there were 1197 with the name Abbott through the name Younger, dealing with Negro taxpayers in Ayden Township? Did you follow the same method with reference to all of the remaining townships?

A. Yes, sir.

(p.74) Q. Now, Mr. Andrews, can you give us the total number of white people on the tax list for Pitt County for the year 1946?

A. No, sir.

Q. You gave that on the preceding trial?

A. Yes, sir. The Judge sent me down and let me count them.

Q. If I show you this volume will that refresh your recollection of what you had for 1946?

The Court: Is it your contention that what he said then is correct?

Mr. Rogge: Yes, sir.

The Court: It is admitted.

(p.75) Mr. Rogge: His answer was for the year 1946 a total of 15,517. "Question: Have you the total for white persons?" "Answer: Yes, 10,344". "Question: Have you the total for negroes on that list?" "Answer: Yes, 5173", on which the Judge based his finding 17, that the tax list for 1946 contained 15,517, of which 10,344 were white and 5,173 were negro taxpayers.

(p.78) DAVID T. HOUSE, JR., having been first duly sworn, testified as follows:

Direct examination.

By Mr. Rogge:

Q. Please state your name?

A. David T. House, Jr.

Q. Where do you live?



A. Bethel, Pitt County.

Q. Do you or have you held any official position in that county?

A. Yes, sir.

Q. Tell us what?

A. Clerk of the Superior Court.

Q. And from when to when have you been Clerk of the Superior Court of Pitt County?

A. Since July 3, 1945 until the present time.

Q. You are still Clerk of the Superior Court of Pitt County?

A. Yes, sir.

(p.82) Q. You get from the sheriff a list of the number he has served and that goes in your book?

A. Yes, sir.

Q. That made a total of 2685 from August, 1945 until May Term, 1949?

A. Yes, sir.

[fol. 11] (p.83) Q. During the time you have been clerk is my information correct that on the grand jury there have been no negroes?

A. Yes, sir, there have not.

Q. There has not been one on the grand jury?

A. Not since 1945 until today.

The Court: How do you know that?

A. There is no record but I don't remember seeing one. My recollection is no negroes have served on the grand jury but there is no way of telling from my records because no distinction made between the two.

Q. You have been present at every grand jury sitting and every court since 1945?

A. Yes, sir.

Q. You have never seen a negro on the grand jury?

A. I don't recall one.

(p.84) Q. Since you have been seeing them you have never seen a negro on the grand jury?

A. That's right. I didn't know anything about the grand jury until I became clerk.

Q. I don't want to get anything but the facts. I limit my time from the time you became clerk in 1945 until the present time. You have seen grand juries in that time?

A. Yes, sir.

Q. And you have seen no negro in Pitt County on the grand jury?

A. That's right.

Q. If you had seen one you would have remembered it?

A. I think so.

Cross-examination:

(p.89) Q. Does your recollection enable you to state whether any negroes have been customarily drawn on the panel since 1947?

A. We have had negroes on practically all the panels since 1947. I couldn't say but sometimes one and sometimes two. I have seen as high as four or five.

Q. Isn't it a fact they actually serve on the petit juries?

A. Yes, sir.

Q. In criminal as well as civil cases?

A. Yes, sir.

Q. And isn't it a fact that that is not only just a rare occurrence but a common occurrence?

A. Yes, sir, it is.

Q. In the term of court at which these petitioners were tried (p. 90) were there not several negroes on the jury panel?

A. As I recall there was. There had to be because we had one on the jury that tried him.

Q. He sat on the case?

A. Yes. I don't recall whether the original panel or not.

Q. Were there two subsequent panels drawn?

A. Yes, sir.

Q. Were there any negroes on those?

A. Yes, sir, there was.

Q. Don't you recall that one or two got off for one reason or another?

A. Yes, sir, I remember a negro asked to be excused.

[fol. 12] Q. Claimed exemption as an undertaker. He wanted to get off ahead of time?

A. Yes, sir.

Q. Didn't a negro woman called excuse herself because she was opposed to capital punishment?

A. Yes. I had forgotten that.

Redirect:

(p.91) Q. Do you recall any grand jury you didn't see at all during its sitting?

A. No, sir.

Q. They serve a year?

A. Yes, sir.

Q. How many grand juries have been selected during your term as clerk?

A. We have had eighteen each year.

Q. How many different selections have there been during your term?

A. I think we have had eleven since I have been there. Eleven drawings.

Recross-examination:

(p.93) Mr. Rogge: I call Your Honor's attention to the findings 30, 31, 32 and 33 of the trial Judge:

"30. That in the drawing of the special venire of 150, ordered by the Court in the trial of this case to supplement the panel of regular jurors in the selection of the jury, the said panel of regular jurors having been exhausted, as set out in the order made in this case, of the 150 names drawn there (p.94) were five members of the negro race; that of said five negro persons, two have died since their names were put in the jury box in 1947, and one had removed out of the county since said date, and two were summoned and reported for duty, out of the 89 persons found and summoned by the Sheriff for service on said special venire. That of the two negro

persons reporting for jury duty, one disqualified herself by disclosing that she had conscientious scruples against capital punishment, and the other negro juror was accepted, qualified and is seated upon the jury selected for the trial of this case.

31. That most all of the persons testifying with respect to the constitution of the jury in Pitt County Superior Court heretofore, testified that they had heretofore never been drawn, and one of these persons was drawn, as a member of the said special venire, from the jury box; that others testifying has been in court from time to time for only short periods, at different terms, and observed the proceedings of the court for only brief intervals. That it is a fact of common knowledge, of which the Court takes judicial notice, that the entire panel of jurors drawn for any term, is rarely, if ever, seated in the jury box in trying the case with [fol. 13] which the court is engaged. That other persons testifying to the effect that they had not been drawn for jury service, also testified that they were following occupations which exempted them from service as jurors, as provided in Chapter 9, (p.95) section 19 of the General Statutes of North Carolina, to-wit, "ministers of the Gospel, physicians, funeral directors and embalmers."

32. That a second special venire, to supplement the panel of jurors from which to select the jurors to try this case consisted of 35 drawn from the jury box in open court in the presence of the defendants and their counsel, of whom 17 were found and served by the Sheriff and reported for duty; and amongst those was a witness, a negro, who had theretofore testified that he had never been drawn for jury duty, and promptly disqualified himself and claimed exemption because he was a funeral director and embalmer.

33. That of the second venire ordered for the selection of a jury in this case two members thereof were members of the negro race, that no person was excluded therefrom by reason of race or color.



Re-re-direct examination of D. T. House, Jr.

By Mr. Rogge:

Q. Mr. House, will you state what this volume is?

A. Jury book. List of jurors listed alphabetically who have served on juries.

Q. For your term of office?

A. I think it goes back to '41.

The jury book is introduced and marked "P-1"

The tax list is introduced and marked "P-2".

The General Election books, 20 in number, are introduced and marked "P-3".

(p.96) CHARLES P. GASKINS, being first duly sworn, testified as follows:

Direct examination.

By Mr. Rogge:

Q. Please state your name?

A. Charles P. Gaskins.

Q. Where do you live?

A. Pitt County, Greenville. Lived there all my life except four years in the armed service.

Q. Have you held any state office there?

A. County office. Register of Deeds for Pitt County. Ex-officio clerk to the board of county commissioners.

Q. For what time:

A. July 15, 1947 to December 15, 1950, last Friday.

Q. By virtue of being register of deeds you were also ex-officio clerk of the board of county commissioners?

A. Yes, sir.

(p.97) Q. Now, do you also have and did you bring with you the book containing what is known as the jury scroll book?

A. Yes, sir.

[for 14] - Q. May we have that?

A. That's right over there also.

(p. 98) Q. The document referred to as jury scroll is marked "P-5."

Q. This document labeled "Jury scroll Pitt County 41-49" tell us what that is?

A. This book contains the names of the citizens of Pitt County, both white and colored, placed into the jury box and from the jury box those names drawn out and they serve or don't serve, depending on whether they were summoned or not, from 1941 to 1949.

The "Jury Scroll Pitt County, 1941-1949" introduced and marked "P-5".

(p. 99) Q. And this book contains the total list in 1949, and I take it for 1947 for these were the ones the board of county commissioners of Pitt County had decided were eligible for jury duty?

A. Yes, sir.

Q. Do you know what that total was for 1947 to 1949?

A. No, sir, I don't.

Q. Does the figure ten thousand sound about right?

A. Was that ten thousand figure for the 1947 list? I think the one I prepared for the board would be some less. I judge that from looking at this book. Less than the 1947.

Q. Is the figure ten thousand approximately correct for 1947?

A. I would think so.

Q. I notice in this book—and you have been through this book?

A. Yes, sir.

Q. I am referring now to jury scroll Pitt County, 1941 to 1949; (P-5), I notice page "Ayden Township, White, 1941". You know what that means?

A. No, sir.

Q. You have seen it before?

A. No. The extent of my looking through this book was of course roaming around the office to see what was in there. So far as (p. 100) looking at that book I have never looked at it. I am certain it goes in there.

Q. You hadn't seen that before today?

A. I think I had seen it but I hadn't noticed "white" was written on the page. You notice there is a division page for each of the years for which the jury scroll was made up.

Q. I believe you submitted an affidavit in the proceedings in the Superior Court?

A. That's correct.

Q. And you have in there, and I show it to you, among other things: "That affiant, however, out of his knowledge of various (p. 101) individuals in the county and after the Board of Commissioners of Pitt County had reviewed the name of each person drawn for jury duty for the hereinafter described terms of court and had stated to affiant the persons known to them to be a member of the negro race, does hereby certify that not less than the number of persons of the negro race indicated below were drawn for jury duty at the terms of court described below, namely: [fol. 15] October Term, 1948—Two; November Term, 1948—One; January Term, 1949—Two; March Term, 1949—Two; May 9 Term, 1949—One."

Is that correct?

A. That's correct.

Q. There were additional terms to the terms listed there?

A. Yes, sir.

Q. How many terms all told were there during that period?

A. I don't know. There are sixteen terms of Superior Court in Pitt County each year, plus two that are special term, during the four terms I have been there.

Q. You are giving it here as how many terms?

A. Two in 1948 and three in 1949.

Q. If you had had the total for the two years it would be (p. 102) about thirty-six. That is all.

Cross-examination of Chas. B. Gaskins.

By Mr. Moody:

Q. In your certificate you certified it is not less than the number you gave?

A. These numbers as shown on there were the numbers arrived at after I had looked over that particular jury

list and knew at least two were negroes. I know that by my own personal knowledge.

Q. There could have been more than that. You don't know. You made that up from your own personal knowledge of the names of these people?

A. Yes, sir.

Q. You knew there could be more and that is the reason you limited your answer?

A. Yes, sir.

Q. There could have been more?

A. Absolutely.

(p. 105) W. J. SMITH, being first duly sworn, testified as follows:

Direct examination.

By Mr. Moody:

Q. State your name and address?

A. W. J. Smith, Bethel, Pitt County.

Q. What position do you hold in Pitt County?

A. None at this time.

Q. What county office did you hold at the time of this trial and before?

A. Chairman of the board of county commissioners.

Q. When did you take office?

A. December, 1946, I think.

Q. Were you present when the jury list or panel was drawn from which nine grand jurors were drawn who found this bill, and other jurors were drawn as trial jury at the meeting of the commissioners?

A. I think so.

[fol. 16] (p. 107) Q. Will you explain how you went about making up the list?

A. We instructed the clerk and county attorney to provide us list given to us first Monday in June that year.



Q. When you received the list was there any mark or anything on the list that disclosed to you the race of anybody on the list?

A. No, sir. When the list came to us it was divided by district to each of the commissioners and they went over it. Purged any name of any person dead or they felt didn't meet qualifications morally or of sufficient intelligence.

Q. Brought back to the meeting and there is where the purging took place?

A. Yes, sir.

Q. After you met and ruled on who you wanted to omit or keep out of the list what was done?

A. The list clipped and scrolls put in the box.

#### Cross-examination:

(p. 109) Q. At the board meeting you took the list that covered your township?

A. Yes, sir.

Q. You remember the names on your list?

A. No, sir.

Q. Quite a few people on there you didn't know?

(p. 110) A. A good many.

Q. Know how many negroes?

A. I didn't pay any attention to it and had no way of knowing except in my immediate community.

Q. Tell us what process you went through in making the selection?

A. I checked the ones in my own community. If I found one was dead, or one had been under sentence in court I marked his name through and in the other townships I recall I talked the matter over in my office with two or three men.

Q. Who were they?

A. I remember Belyoir Township Mr. W. R. Holland was one. I don't remember who was with him but somebody down there.

Q. He is white?

A. Yes, sir. I can't recall that any were removed from any of the other lists. There may have been.

Q. Who were the others you checked with?

Mr. Holland is the only one I remember now, and I think Mr. Paul Lavenport possibly from Paetolus Township, or his son. We were in his store anyway.

Q. You didn't make any effort to get a lineup on every person on your list? The statute requires those of good moral character and of sufficient intelligence?

A. Yes, sir.

Q. Did you undertake to find that out for every person on your list?

(p. 111) A. I did as much as I thought was required.

Q. Did you have this kind of knowledge as to every person on your list?

A. No, sir, I didn't.

[fol. 17] Q. As to what percent did you have this knowledge?

A. That would be a pure matter of guess.

Q. Half?

A. Hardly that many.

Q. One-third?

A. Probably.

Q. As to a third you had the knowledge and as to two-thirds you didn't?

A. That's correct. I don't think the law would require me to determine as to each of these men or women. I didn't have the time to do it.

Q. Whatever the law required you had knowledge as to one-third and didn't have it as to two-thirds?

A. I assume other members of the board had the same knowledge of those men as I had of some of their areas.

Q. Just what or how much discussion was there when the board re-convened?

A. We went over the list. If anyone had any knowledge or any doubt they erased their names. I didn't go one by one over the other lists. I probably glanced over them with the other commissioners and if anyone's name was raised we probably (p. 112) discussed it.

Q. How much discussion?

A. We used a part of the session, hour or couple of hours?

Q. When you got together with these lists you had a discussion of an hour or so?

A. Something of that kind.

Q. As to the ten thousand names on it for 1947?

A. That's right.

Recross examination:

(p. 113) Q. You are aware of the fact in general terms that the registration and poll books of 1946 of a total of 20,488 names 20,065 were white and 423 were negroes?

A. I didn't know it until today.

(p. 114) Q. You knew there were not many negro names on the registration books?

A. I assume there were not.

Q. Now this Paul Davenport is also white?

A. Yes, sir.

That is all.

EVIDENCE IN RE CONFESSIONS OF LLOYD RAY DANIELS AND  
BENNIE DANIELS

The petitioners introduce in evidence birth certificate of Lloyd Ray Daniels, certified to by C. P. Gaskins, Register of Deeds of Pitt County, showing he was born September 25, 1931, and same is marked "P-6".

The petitioners introduce in evidence birth certificate of Bennie Daniels, certified to by C. B. Gaskins, Register of Deeds of Pitt County, showing he was born November 1, 1931, and same is marked "P-7".

[fol. 18] (p. 115) Objection by respondent.

Mr. Moody: The age is not at issue. They didn't raise the question in the Superior Court that they were subject to the juvenile court.

Respondent objects to all testimony bearing on petition of petitioners that confessions received at the trial were involuntary and therefore ought not to be received in evidence.

The objection is overruled.

LLOYD RAY DANIELS, being first duly sworn, testified as follows:

Direct examination.

By Mr. Taylor:

Q. State your name?

A. Loie Ray Daniels.

The Court: The certificate has the name of Loie Ray Daniels.

Mr. Taylor: There is no doubt but what his name is Lloyd.

Q. Where were you born?

A. Pitt County.

Q. You know when you were born?

A. No, sir.

Q. Who is your mother?

A. Alice Daniels.

Q. What is your father's name?

A. Rufus Daniels.

Q. Were you the only child in your family? Do you have any (p. 116) sisters and brothers?

A. I have some sisters but no brothers.

Q. How many sisters?

A. I have to count them up.

Q. Can you count them up?

A. Nine.

Q. And no brothers?

A. No, sir.

Q. Where did your family live in Pitt County?

A. They lived in two separate places. You mean that farm?

Q. What type of work did they do?

A. Farm.

Q. Did they own their own farm?

A. No, sir.

Q. Work for anyone?

A. Yes, sir.

Q. Who did they work for?

A. Miss Kate Stokes.



Q. How did your father operate that farm? Did he operate it on sharecrop basis.

A. I don't understand.

The Court: Was your father a sharecropper?

A. He rents it so much.

The Court: Rent it for so much a year?

A. No, sir.

[fol. 19] (p.117) The Court: He got a certain share of the crop?

A. Yes, sir.

Q. Did you ever go to school?

A. No sir.

Q. You know that they say you gave a confession in this case in which you are concerned?

A. Yes, sir.

Q. Will you state to His Honor what happened from the time you were picked up on the Sunday night at the time involved until the time you were supposed to have made a statement if you did?

A. Yes, sir.

Q. State what happened?

A. I went to town that Saturday. I told my mother I was going to town to get a haircut and go to the show. I went and got a haircut. Went to the show. When I left out of the show I went down town to a place called Home Grocery and come to the bus station and was sittin in the bus station and Bennie and his brother come there.

Q. What kin is he to you?

A. First cousin, and he asked me did I want to walk down town and get a pint of whiskey and I told him yes and me and him and his brother went down to the Home Grocery store and got a pint of whiskey and me and him and his brother drank it and we went and stayed a while and come back to the bus station and stayed (p.118) there not so long. I didn't have no time. I don't know exactly what time it was we went to a place called Bonner Lane. Some boys in there dancing and girls and me and Bennie went in and we started to dance and one fellow stepped on my toe. I told him to stay off my toe. He got mad and started to cussing and I started to cussing him back. We started fighting in the place but the lady told us—

Objection by respondent.

Mr. Moody: If they go into the merits we would like to.

Mr. Taylor: He is not answering my question.

The Court: If it is competent to go into the question of this involuntary confession about which I have some doubt, then it is necessary for the petitioner to show a good deal of the details surrounding the whole affair. I don't think it proper to go into all of it but I will permit some considerable leeway.

Q. You will continue.

A. We started fighting in the place and the lady told us we would have to go out, that we couldn't fight in there. Me and Bennie and a lot of boys went in front of the barber shop and started fighting. I had a short handle, black handle pocket knife. Rest of the fellows had knife. Whole lot of the rest of the fellows started fighting and all jumped on me and Bennie. The fellows jumped on me and Bennie and after the fellows jumped on me and Bennie we cut because we knowed (p. 119) they could whip us because there was more of them than us.

[fol. 20] Q. You say you all had knives?

A. I did.

Q. Did anybody use a knife?

A. Yes, sir.

Q. Anybody get cut?

A. Yes, sir. I got cut on the hand. They had me down and was on top of me.

Q. What happened after you left Bonner Lane? Where did you go?

A. Went to a place called Wet Wilson's.

Q. Where did you go from there?

A. To a place you call Busy Bee.

Q. Is that another cafe in Greenville?

A. Yes, sir.

Q. Then where did you go?

A. First red light on the Washington highway.

Q. Where were you headed?

A. Headed home then. We stood there.

Q. Was it light or dark?

A. Dark. Me and Bennie decided to walk home. We couldn't get a ride. A man passed us, Mr. Tom Elks. We

knew him. He didn't stop to pick us up. We walked to Central cross. A man passed us on a big pickup truck and we thumbed. He stops and we jumps on the back of the truck. He told us when we got home (p. 120) to tap on the cab of the truck so he would know we wanted to get off. When I got home I knocked on the top of the truck and he slowed down and me and Bennie jumped off and run in the house and my mother saw I had some blood on me and she went to crying and asked me what happened. I told her I got in a fight in Greenville. She asked me did anybody get killed. I told her no. We stayed there three or four minutes I imagine and I pulled my clothes off and washed my hand and we laid down. My mother come in and asked me was the store open up there. I told her yes. She asked me would I mind going and gettin her a box of snuff and bottle of drink and me and Bennie and my sister Myrtle Ruthi's boy went to the store and got some drinks and snuff and come back home.

Q. Did you stay home the next day:

A. Yes, sir. I got up and washing and took a shower, put on some clothes and was going over the river to see my girl at a place called Stokes. I caught the one o'clock bus, me and Bennie, me and Bennie and my sister caught the bus. She won't going to town, she was going to the cafe. I was goin over the river to my girl friend's. When I caught the bus I asked the man what time the bus left Stokes and he said about five o'clock that evenin.

Q. What time was that when you asked him?

A. Two or three minutes after one o'clock.

Q. Was that in the afternoon?

(p. 121) A. Yes, sir. After I asked him what time the bus going to Stokes he said five o'clock.

Q. Where did you go after you left the bus station?

A. Went to Bennie's first cousin's.

Q. Then what happened?

A. Nothing, we just stayed there and talked.

[fol. 21] Q. What if anything was said?

A. Just sit there and laughed and talked.

Q. Then what did you do?

A. I walked down to my sister's house. Me and Bennie decided to walk there and my sister wern't home. Me and

Bennie went in the house and set down. Not so long after we got there my sister and her boy friend and another man come there and they went upstairs. Me and Bennie went upstairs. This boy called Bennie downstairs and told Bennie about some white fellows looking for us to kill us. He said "For what?" Bennie said he didn't po nethin about it. Bennie called me downstairs and told me about it. I told Bennie, "Nobody ain't going to kill me. I ain't killed nobody." He said, "I know you ain't killed nobody but you better get out of town." Me and Bennie walked on down the railroad and stopped in the woods and set down on the railroad crossing. I asked Bennie what he wanted to kill us for and Bennie said he didn't know. I told Bennie, "I know one thing, I know I didn't kill nobody. I ain't goin to try to get away. I promised my mother I was goin to (p. 123) Stokes." He said, "I know you ain't killed nobody but they lookin for you to kill you."

Q. Did you leave the railroad track?

A. Yes, sir.

Q. Where did you go?

A. To my sister's house.

Q. From there where did you go?

A. To Stokes.

Q. How did you get to Stokes?

A. On the bus.

Q. Go to the bus station?

A. Yes, sir.

Q. Who did you see at the bus station?

A. Some law.

Q. You mean police?

A. Yes, sir.

Q. Did they see you?

A. Yes, sir.

Q. Then you took the bus and went to Stokes?

A. Yes, sir.

Q. Were you at Stokes at your girl friend's house when the police officers came and picked you up?

A. Yes, sir.

Q. You know who they were?

A. I know some of them but not all.

(p. 123) Q. Had you at any time seen any of them before that night?



A. No, sir.

Q. You know whether either one of them was the Sheriff of the County?

A. Yes, sir.

Q. What time of night did they come there?

A. Pretty good and late. I didn't have no time.

Q. Had it been dark long?

A. Pretty good while.

Q. Where were you when they came to the house?

A. I was laying down.

[fol. 22] Q. Tell His Honor what if anything they said from the time they came?

A. When he come there he come in the house and asked me my name and I told him.

Q. How many were there?

A. Three come in the house and the rest stayed out doors. Asked me my name. I told them. Told me to get up. I got up and he asked me to get my hat and I got my hat. He said he was going to handcuff me. I asked him for what.

The Court: Can you identify the ones that came there?

A. Yes, sir.

The Court: Are the three persons who went there here? Sheriff Tyson, stand up. Deputy Sheriff Manning and Mr. Gibbs.

(p. 124) A. I know the one with glasses on, (Referring to Sheriff Tyson), and the one on the right.

The Court: How about the one in the middle?

A. He was driving and I asked him what he was getting me for.

Q. Asked which one?

A. Mr. Gibbs. He told me to wait and I would see. He handcuffed me and pushed me outdoors and there was a whole lot of more laws come from around the house. They searched me and asked me where Bennie was. I told him I didn't know. He asked me two or three times and carried me and put me in the car. Three officers got in the car with me and the rest come in cars and they went on down and cranked up.

Q. At the time they arrested you did you see a warrant or anything?

A. No, sir. When I got in the car I asked them again what did they have me for. Mr. Gibbs said, "Wait and you will find out." I sat there. They cranked the car and went on down the dirt road and stopped.

Q. How close was this car parked to the house when they picked you up? Was it right in front of the house?

A. No, sir.

Q. How far was it from the house?

A. I couldn't tell. We went across a field to get to the car.

Q. At the time you went across the field who was with you?

(p. 125) A. Mr. Gibbs and the rest of the two officers.

Q. Was it dark?

A. Yes, sir.

Q. Were you handcuffed?

A. Yes, sir. They stopped the car through the woods on the dirt road. I asked them what they stopped for. They told me they wanted me to talk some. I asked them, "Talk about what?" They said, "We want you to tell about killing that man." I told him I didn't kill no man. He asked me where I was that Saturday night. I told him I where I was and Mr. Gibbs said that won't so, said I was lying. He said he wanted me to tell him I killed that man. I told him I didn't kill that man, didn't know nothin about it. He said, "You just as well tell me because if you don't we will kill you." Mr. Gibbs said he would kill me. I said, "I didn't kill him." He said, "You are lying." I didn't say anything more to him because he started cussing and he turned around and put his hand on his pistol.

Q. Did you see him put his hand on the pistol?

A. Yes, sir.

[fol. 23] Objection by Respondent to leading questions.

The Court: I think at this time counsel should be very careful not to suggest.

(Answer continued): When he turned around and put his hand on his pistol I asked him what he was going to do and he said if (p. 126) I didn't tell him I killed the man he was going to kill me and he said I would never see my mother again and he really scared me, that is the truth. I thought he would because he said he would.

Q. Was the car moving along at that time?

A. No, sir, it was stopped.

Q. Where was the Sheriff and Mr. Manning?

A. Settin in the front. He said if I didn't tell him I killed this man he was goin to kill me and I would never see my mother again. After he told me that I just knowed he would, and I was afraid and I told him, "Yes, sir, I killed him" and he said that was all he wanted. After I told him I killed him he wrote down a whole lot of more stuff. I couldn't read and I didn't know what he wrote down.

The Court: Was that on the car?

A. Yes, sir. After he wrote it then they cranked up the car and got on the highway going to Williamston. They said the car broke down. I don't know what got wrong with the car but they stopped again on the highway and called up Williamston to call the patrolman to come and get them. After they got to Williamston they asked the rest of the two officers to sign the statement and they said to wait, that they would do that later.

The Court: Did you sign the statement?

A. No, sir.

(p. 127) The Court: I understood you to say Mr. Gibbs suggested that the other two sign the statement?

A. That's right.

The Court: Mr. Gibbs had written out a statement and he suggested that they sign it?

A. Mr. Gibbs asked the rest of the officers to sign it and they said they would sign it later on.

The Court: You hadn't signed it?

A. No, sir.

The Court: Could you write?

A. I can write now but I couldn't write my name then. Then he put me in jail and I asked could I see my mother and they told me no, I wouldn't live long enough to see my mother.

Direct examination (continued):

Q. Who said that?

A. Mr. Gibbs was the one talking. I didn't say nothin more. The next Monday night they come back and I just knowed they come back to finish me because they told me

they was coming back and finish me up. When they come back they took me out of the cell block downstairs and a whole lot more officers there.

Q. You know how many were there?

A. I couldn't exactly give you all the names because I didn't know them. They told me they wanted to get another statement. (p. 128) I asked them for what. He said, "You give me one last night and I want another one."

Q. Was that in jail?

A. No, sir, this was down in the office.

[fol. 24]. Q. They had taken you out of the cell?

A. Yes, sir, in (some kind of office. I told them I didn't know nothin about it. They said, "You witnessed it one time and you just as well witness it again." He asked me what did I kill him for. I told him I couldn't tell him nothin because I didn't know.

Q. Who asked you that?

A. Mr. Gibbs.

Q. He was there Monday night?

A. Yes, sir.

The Court: Is Mr. Gibbs a deputy sheriff?

Mr. Moody: He is S. B. I. agent but at that time he was state highway patrolman.

He asked me what did I kill him for. I couldn't tell him what I killed him for because I didn't know what to tell him. They went on and wrote a statement down. I couldn't tell what they wrote because I couldn't read it. That boy, he was writing on a piece of paper.

The Court: What is his name?

Mr. Taylor: Arnold, police clerk.

After he wrote it down—

(p. 129) Q. How did he write it?

A. He wrote it on a piece of paper first and then went to the typewriter and wrote it on the typewriter. After he wrote it he told me to sign my name to it. I told him I couldn't write. He told me to make a cross mark. I asked him, "What you want me to make a cross mark for?" He said, "You can make a cross mark." I went on and made a cross mark. He asked me did I know anything about Bennie.



I told him I didn't know where Bennie was. After awhile they brought Bennie in there.

Q. How long had they had you downstairs?

A. As close as I can guess at it hour or hour and a half.

Q. They ask you any questions at that time?

Objection by Respondent.

Q. What were you doing during the hour they had you down there?

A. I was just settin there.

Q. What were they doing?

A. They were making confession. I was just settin there.

Q. Were they talking to you at the time?

A. Yes, sir, once in a while they said somethin to me. But the words they asked me I couldn't answer them back; couldn't answer the questions back because I didn't know. Then he carried me out of that room and carried me in a separate room by myself. Then they took Bennie in there and questioned him.

Q. What, if anything, did they do to you after that?

A. They didn't do nothin else to me. After the fellow typed (p. 130) it down, the sheriff I think, I signed my name to it, that cross mark, then he turned around and read it to me.

The Court: Who did the reading?

A. One of the officers. I don't know who but I didn't know what he was reading. All I know he was reading.

The Court: You couldn't understand?

A. No, sir.

The Court: Why? — He was readin so fast I couldn't understand. All of them readin some papers.

[fol. 25] Mr. Taylor: We requested the Court to bring into Court a copy of the alleged confessions that was signed. We would like to have them.

Sheriff Tyson: They have been in possession of the Clerk of the Court. (Hands papers to counsel.)

The Court: Are they the originals?

Sheriff Tyson: Yes, sir.

Q. If you can recall, is this the paper on which you made that cross mark?

A. I don't see no cross mark.

Q. Right here?

A. Yes, sir, I think so.

Q. Is this the one you put the cross mark on in Williamston?

A. Yes, sir.

Q. I show you two sheets of paper. Have you seen these before?

The Court: Were they produced by Sheriff Tyson?

Mr. Taylor: Yes, sir.

(p. 131) A. Yes, sir, these are the two he wrote in the car when it stopped.

Q. Did you ever put a cross mark on that?

A. No, sir, I didn't.

Q. You state that after you put the cross mark on it they read it to you?

A. Yes, sir.

Q. Could you understand what they read to you?

A. No, sir, they were reading so fast.

(p. 132) Q. You say after they finished with you they took you into another room?

A. Yes, sir.

Q. What happened to you?

A. They didn't talk to me no more. The fellow typewrote it and told me to sign it. When I signed it they got through talking to Bennie and brought us to Raleigh.

Q. Where did they carry you in Raleigh?

A. Put us on death row.

Q. Were you ever brought back to Pitt County?

A. Yes, sir, we was brought back there.

Q. You know when you were brought back to Pitt County after you were carried to Raleigh from Williamston?

A. They carried us back to Greenville.

Q. How soon was that after you were taken to Raleigh?

A. My best understanding about two months.

Q. At that time had any of your people come to visit you?

A. No, sir.

The Court: When did the homicide occur?

Mr. Moody: The bill charges the 5 of February.  
(p.133). The Court: The trial occurred in May?

Mr. Moody: Yes, sir, May 30th.

Q. You say you stayed in Raleigh about two months?

A. Yes, sir.

Q. You know whether or not your people knew where you were?

A. No, sir, I know they didn't know.

Q. Had you seen any of your home folks in that length of time?

[fol. 26] A. No, sir.

Q. Floyd, you say at the time you were picked up three officers came and picked you up whom you identified?

A. Yes, sir.

Q. You know how many other officers were out doors?

A. I can give you my best estimate.

Q. What is your best estimate?

A. About nine or ten.

The Court: In addition to the three that came in?

A. Yes, sir.

Q. Which, if any, of the officers had guns or weapons on them?

A. I saw Mr. Gibb's gun.

Q. Did you see any other officers with guns?

A. Well, or, if I had I don't recall it now. I don't remember seeing anybody with a gun but Mr. Gibbs.

(p. 134) Q. How did you manage to see Mr. Gibbs' gun?

A. After he stopped the car he said he was going to kill me and I saw it then.

Q. At the time you marked this "X" on the confession you say they wrote up in Williamston before that time had they ever advised you of any of your rights?

A. I don't understand.

Q. That is your right not to sign it?

A. No, sir, they didn't advise me nothin.

Q. I think you stated after you signed the confession they read it to you?

A. Yes, sir.

Q. You know how many officers were present at the time they read it to you?

A. There was more than two or three in there. I didn't count them.

Q. I think you said you didn't understand what they read to you?

A. No, sir. They read it so fast I didn't understand it.

Redirect.

(p. 153) Questions by the Court:

Q. When you were in jail at Williamston did you make request to see your mother?

(p. 154) A. Yes, sir. I asked Mr. Gibbs could I see my mother the same night he arrested me.

Q. Were you in Williamston jail?

A. Yes, sir.

Q. What did he say?

A. He told me no.

Q. He didn't say anything about killing you?

A. No, sir, he pushed me in jail.

Q. He didn't say anything about killing you then?

A. No sir.

Q. But he had said that before?

A. Yes, sir.

BENNIE DANIELS, being first duly sworn, testified as follows:

Direct examination.

By Mr. Taylor:

Q. What is your name?

A. Bennie Daniels.

Q. Where were you living at the time this thing is supposed to happen?

[fol. 27] A. In Pitt County.

Q. Where?

A. I was living close around Winterville, between Winterville and Greenville.



Q. With whom were you living?

A. My father and mother.

(p. 155) Q. Do you have any brothers and sisters?

A. Yes, sir.

Q. How many?

A. I have three brothers and six sisters.

Q. What type of work do you and your family do?

A. Work on the farm.

Q. Do you own the farm?

A. No, sir.

Q. Running it on sharecropping basis?

A. My father were.

Q. You were working with your father?

A. Yes, sir.

Q. How old were you at the time this thing is supposed to have happened?

A. I really don't know.

Q. You don't know when you were born?

A. No, sir.

Q. Have you had any schooling at all?

A. I think I went to school I guess as far as the second grade, first or second grade.

Q. You haven't had any schooling beyond that?

A. No, sir.

Q. When were you picked up by the police?

A. I was picked upon on Monday night I think it was.

The Court: What day of the week was it the homicide occurred?

(p. 156) Mr. Taylor: Saturday night.

The Court: And this was the following Monday?

The Witness: Yes, sir.

Q. You know what time of night it was they arrested you?

A. No, sir, I really don't know.

Q. Was it dark?

A. Yes, sir, it was dark.

Q. Lloyd Ray testified that on Sunday you and he went to the railroad track?

A. Yes, sir.

Q. Did you and he part at that time?

A. Yes, sir.

Q. Where did you go after you left him?

A. I was there about five minutes, walked in the woods, and he left me and come back to Greenville.

Q. What did you do after that?

A. I was in the woods until it got dark and when it got dark I come back to Greenville to my cousin's house.

Q. Did you see anyone?

A. Yes, sir, some people.

Q. Who did you see?

A. You mean before I got to her house?

Q. Anybody you saw going by?

A. I won't say I saw anybody. I knew.

Q. What happened after you got to your cousin's house?

(p. 157) A. I took and told her about what I have heard and people looking for me for and what they said they going to do to me if they see me.

[fol. 28] Q. What was that?

A. I told her when me and Lloyd Ray went to his sister's house his sister come there and another fellow come with them and telling me about he had heard some white men looking for us, going to kill us, that we had killed a white taxi driver, asked me did I know anything about it and I told him no. Asked me where was I that Saturday night, did I get in any trouble. I told him I got in trouble at Bonner Lane. He said this was about a white man. I said, "I don't know nothin about it." He said, "Some white men-looking for you all for killing a taxi driver", and I told Lloyd Ray about it.

Q. You were telling your cousin about it?

A. Yes, sir.

Q. After you left her where did you go?

A. To my home.

Q. What did you do?

A. I walked in the house. My mother was crying. Began asking me did I know anything about this man. I told her I didn't know nothing about it. She said the law had been there lookin for me.

Q. What else happened?

A. She asked me where was I at that Saturday night and what (p. 158) kind of trouble had I got in. I told her me and Lloyd Ray got in a fight in Greenville.

Q. What did you tell her?

A. Told her we got in a fight with some boys in Bonner Lane. Then she asked me did I know anything about this fellow. I told her no I didn't know anything about it. She said the law had been there looking for me for killing a white fellow. They was crying and disgusted I guess—

Q. What?

A. Sorry I guess. After I got home we talked about it. I told them where I had been and what trouble I got in and where I stayed, didn't know nothing about this man the people was looking for me for, accusing me. I stayed home an hour or two hours talking and we took and laid down. The next day was Monday. We took and talked about it that day. That Monday evening around about five o'clock, I don't know what time it was—

Q. Did the officers come to your house?

A. Between Sunday night and Monday night.

Q. Yes.

A. No. That Monday evening I think it was I sat around until about five o'clock some people passed my house, car load of white men. They was riding right slow looking towards the house we lived in. I told my people about it. They had already heard about some men looking for us because I guess if (p. 159) was nearly everywhere around there. She told me she was afraid it was people looking for us to kill me and she told me better for me not to stay there but leave and go to a man's house that liv'd near us. I left and went to this man's house.

Q. You know who he was?

A. I wouldn't say but I think his name was John.

Q. He lived in the same neighborhood you lived?

A. Yes, sir. After I got to his house I guess I stayed there around twenty minutes talking to him. He had heard about the same thing that they had seused me of. He asked me did I know anything about this man. I told him no, sir; that I had got in trouble but not with this white man. I guess he must have got afraid for me to stay to his house. He told me another man's house to go to and I done like he told me. I got there—

Q. Was that day or night?

A. Night time.

[fol. 29] Q. Was it dark?

A. Yes, sir. I went to this man's house and told him who sent me to his house. I didn't know him.

Q. You know his name?

A. No, sir. I had never been to his house before. After I got to his house I told him the man had sent me, this fellow John I think his name was, and why he sent me. I don't know what time it was I got to his house, around about nine or (p. 160) ten o'clock but we took and went to bed. Some time that night the law come to that house where I was so I was in one room and the man and lady lived to the house, they in one room and I in another. I had pulled my clothes off and was in bed when the law come to this man's house and come in the room they was in.

Q. You know who the police were?

A. Yes, sir, I think I know some of them.

Q. You know their names and know them if you saw them again?

A. Yes, sir.

The Court: Who were the officers who went to this home and arrested him?

Sheriff Tyson: Mr. Gibbs and Mr. Dorsey.

Q. Are they the men?

A. Yes, sir. So they come in the house and I heard him answer this fellow had anybody been to his house that night and he told them n-, nobody been there. Might have been one or two minutes before the law walked where I was. I was putting on my clothes. The Sheriff come in there and had a freshlight in his hand. He told me to take my clothes out and come in the other room. I did and Mr. Gibbs handed me and caught me in my belt. Another one had me on each side, and carried me to the car.

Q. They tell you what they had you for?

A. No, sir. So they carried me to the car.

(p. 161) Q. Did they tell you what they had you for?

A. No, sir. So they carried me to the car.

Q. Did you see them with guns?

A. I see that Mr. Gibbs. He was just like that man. The rest of them had on clothes like you all dressed.

Q. What kind of clothes did Mr. Gibbs have on?



A. Like that man. (Indicating.)

Q. State highway patrolman clothes?

A. Yes, sir. I got in the back of the car. Two of them got in the back with me. They come right by my house. He told them to stop and tell my brother to tell my father they had caught me. They got to Greenville, changed cars and got in a highway patrolman's car and carried me to Williamston that same Monday night.

Q. Told your brother to tell your father they had got you?

A. Yes, sir.

Q. You know whether they told your brother to tell your father where they were taking you?

A. No, sir. They carried me to Greenville and changed cars, got on another car and carried me to Williamston. Took and searched me and took and locked me up. That was on that Monday night. The next night I think it was the come back over there. I was in a cell there. Three or four of the law come in the cell where I was.

Q. You know who they were?

A. Yes, sir, Sheriff and highway patrolman and the jailor. They (p. 162) come there and asked me did I kill this fellow or what did I know about it.

[fol. 30] The Court: Would you know the jailor in Williamston if you saw him?

A. No, sir. This was the first time I saw him.

Q. Is he the man that locked you up?

A. Yes, sir.

Q. How you know he was the jailor?

A. Because he locked me up and he had a pistol. They called him jailor. They come there the next night and asked me, wanted me to tell them about this man. I told them I didn't know nothing about this man. They began asking me where I was that Saturday night, where did I go and where did I stay.

Q. Who was asking you those questions?

A. It was the Sheriff. It was another man and after I answered where did I go I started to tell them where I met Lloyd Ray and where I stayed that Sunday night. They didn't want to hear so much. They wanted me to tell them about this man.

Q. What man?

A. The man they seusing we had killed. I told them I didn't know nothin to tell them. There was another man there, I don't know who. He said I did know and he said if I didn't tell them he was going to kill me.

Q. Who said that?

(p. 163) A. The law, I reckon. He had on a pistol.

Q. Where were you?

A. In the cell. He said if I didn't tell him about this man he was goin to kill me. I told him where I went that Saturday night and what happened and he took and hit me side of the face and knocked me down and I started cryin.

Q. He did what?

A. Hit me side of the head.

Q. Who?

A. I don't know who he was.

The Court: How many were there?

A. I don't know, sir.

The Court: Were they in the cell with you?

A. Three in the cell with me.

The Court: Were there other prisoners in the jail?

A. Yes, sir.

The Court: There were other prisoners in jail in the cell block but none in the cell with you?

A. No, sir.

Q. And three officers were in there?

A. Yes, sir.

Q. One of those is the one who struck you side of the head?

A. Yes, sir.

Q. Would you know him?

A. Yes, sir. I don't know whether he was officer or not.

(p. 164) Q. Would you recognize him?

A. Yes, sir. I would know his favor because sometime the law has pistol and you don't know whether he is the law or not.

The Court: Mr. Moody, your testimony would be to the effect that the officers talked to him in the jail?

Mr. Moody: Yes, sir, but didn't strike him.

The Court: Are the officers here?

Mr. Moody: All that we know anything about who were down there.

The Court: Will you have them stand?

[fol. 31] At the request of the Court the following persons stand: R. W. Tyson, L. E. Manning, S. G. Gibbs, S. B. Lorsey, L. D. Page and R. A. Peel.

The Court: Look at those carefully.

The Witness: That man yonder.

The Court: That is Mr. Page. He is the man who struck you and knocked you against the cell or bars, side of the cell?

The Witness: Yes.

Q. Go ahead.

A. After they threatened killing me, after he hit me it scared me so bad I really was scared the was going to kill me if I didn't tell them what they wanted to. So I started telling them the way I met Lloyd Ray, the way we went. Tried to tell him where we met and where we went and what happened. That man yonder took and went out.

(p. 165) Q. Mr. Page?

A. Yes, sir, and he come back in there with a little cripple fellow. He hopped.

Q. Is that the gentleman, Mr. Arnold?

A. Yes, sir. They come back and had a whole lot of writing on paper and tole me Lloyd Ray said this way and this way and told me to witness it and I said yes, sir, and they brought me to another cell. After a while they brought Lloyd Ray in the cell where I was and that man yonder—

Q. With the red tie, Mr. Arnold?

A. Yes, sir, they come back in there and a whole lot of stuff written on a paper, said Lloyd Ray said this way and witness here and I did and said Lloyd Ray said it and asked me was it true and I told him yes. I was already nervous. They had threatened me and hit me. They took me and brought me in another cell. I was there about five or eight minutes. They brought Lloyd Ray in there. Both of us set down. They read the confession to us, asked me to sign it. I told him I couldn't sign, the sheriff done signed mine and they said "This will be held in court against you all."

Q. Had they told you of any rights you had under the law not to say anything before they brought it in there?

A. No, sir. The Sheriff said, "You boys remember this will be held in court against you all." They didn't question us no more but took us then and brought us in to Raleigh.

(p. 166) Q. At the time they picked you up did they have a warrant for your arrest?

A. No, sir. Didn't read nothin to me. Just grabbed me and handcuffed me and brought me on.

The Court: What will the respondent's testimony show as to the issuance of a warrant?

Mr. Moody: I don't think we had a warrant at the time. We have a contention about that. The record shows issued on the 8 of February. I think they were talking to them on the 6th.

The Court: The warrant was issued on the following Thursday?

Mr. Peters: Tuesday was the 8th. The warrant shows the crime was committed on or about the 5 of February, which was on a Saturday. Monday was the 7th and Tuesday the 8th, when the warrant was issued.

The Court: Can it be agreed as to when this prisoner and the other were interviewed and when the questioned confession was made?

Mr. Moody: My contention is that it was Tuesday night. [fol. 32] The Court: After the warrant was issued?

Mr. Moody: I don't think the warrant was issued until after they talked to them.

The Court: Warrants issued after confessions were made. Was there any warrant when Lloyd Ray was arrested or when he made the confession?

(p. 167) Sheriff Tyson: Both confessions made Tuesday night.

The Court: Was that before or after the warrant?

Sheriff Tyson: I couldn't say until after I see the warrant.

The Court: It bears date February 8th.

Sheriff Tyson: February 8 is the night of the confession.

The Court: I think it may be a very critical question. I think it important that it be cleared up. Do you think your evidence would clear it up?



Mr. Moody: I don't know.

Q. Was any warrant ever read to you?

A. No, sir.

Mr. Taylor: I would like to ask if respondent would concede the fact that there was no warrant issued at the time of the arrest.

The Court: Certainly when taken into custody that was an arrest. Now when that happens it appears no warrant had issued.

Mr. Moody: Yes, sir, but we have the North Carolina statute.

The Court: I don't think that determines the question. But that is certainly a thing that ought to be in the record. Respondent concedes that when each of the petitioners were arrested no warrant had been issued.

The Court: I understood Sheriff Tyson to say "When we picked them up we had no warrant?"

(p. 168) Mr. Moody: I think that is correct.

The Court: When petitioners were taken into custody, prior to the time they were taken into custody and arrest no warrant had been issued.

#### Re-direct examination:

(p. 178) The Court: He has already said that. Does your evidence tend to show that Bennie signed it?

Mr. Moody: Yes, sir, that he signed it. There was introduced in evidence identification of his fingerprints made at previous time and the officer testified that Bennie signed that card at the same time and that was his signature and as I remember that was compared in court with his signature.

The Court: There was a statement signed by Lloyd Ray to which he made his mark, and one for Bennie which your evidence tends to show he signed himself?

Mr. Moody: Yes, sir.

The Court: They are both in the record?

Mr. Moody: Yes, sir.

(p. 179) Mr. Taylor: I assume that the alleged confession of Bennie is in the record.

Mr. Moody: Yes.

Mr. Taylor: I would like to know if the same is true as to Bennie, that no warrant issued at the time of the arrest.

Mr. Moody: Oh, yes.

The Court: At the time he was taken in custody.

Mr. Taylor: They were arrested without a warrant.

[fol. 33] ; DR. IRA C. LONG, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Taylor:

Q. Do you hold any position with the State of North Carolina?

A. Yes, Superintendent of the State Hospital at Goldsboro.

Q. What type of institution?

A. For the insane.

Q. Maintained exclusively for negroes?

A. Yes, sir.

Q. How long have you held that position?

A. A little over four years.

Q. You were holding that position in February, 1949?

A. Yes.

Q. Did you ever have occasion to examine Lloyd Ray Daniels and Bennie Daniels?

A. Yes.

Q. Will you state to His Honor the circumstances under which that happened?

A. Bennie Daniels had the mentality of a high-grade moron.

Objection by respondent.

Mr. Moody: They didn't set that up at the time of the trial.

The Court: I think the better course is to go the way we are going. I think age, mental capacity both probably would be competent.

Mr. Taylor: It is introduced only on the theory of the confessions.

The objection is overruled.

(Answer continued): Lloyd Ray Daniels had mentality of a normal, dull normal.

Q. Did you give the finding with respect to Bennie Daniels?

A. High-grade moron. Lloyd Ray Daniels had IQ of about 80 and would be classified as normal, dull normal.

Q. How did you test that?

A. Wellsley Bellevue & Rhoshock.

(p. 184) The petitioners rest on the confession phase of the case.

Respondent renews objection to all testimony having to do with bearing on the questioned confessions and moves to strike from the record all evidence of this nature. The objection is overruled and the motion is denied.

#### Respondant's Evidence in re Confessions

Sheriff RUEL W. TYSON, being first duly sworn, testified:

Direct examination.

By Mr. Bundy:

Q. You are Ruel W. Tyson, Sheriff of Pitt County?

A. Yes, sir.

Q. Do you remember the arrest of these two petitioners?

(p. 185) A. Yes, sir.

Q. Were you present when Lloyd Ray was arrested?

[fol. 34] A. Yes, sir, I was.

Q. He was the first one arrested?

A. Yes, sir.

Q. When and where was Lloyd Ray arrested?

A. Lloyd Ray was arrested on Sunday night between one and one-thirty on the L. C. Whitehurst farm in the Stokes section of Pitt County.

Q. Did you go to the house yourself where he was found?

A. Yes, sir, I did.

Q. In company with whom?

A. In company with Deputy Sheriff Manning, Deputy Sheriff Mills, Al. Dorsey, M. M. Corbett, police officer, and S. G. Gibbs, who was patrolman at that time.

Q. All of you go to the house at the time?

(p. 186) A. Yes, sir.

Q. Where did you find Lloyd Ray Daniels?

A. In this house, tenant house.

Q. Where in the house?

A. He was lying on a bed or couch one, I don't know which.

Q. Dressed or undressed?

A. He was fully dressed.

Q. What time was that?

A. Between one and one-thirty.

Q. Was he taken in custody at that time?

A. Yes, he was.

Q. Where did you take him then?

A. We parked our car in Mr. Whitehurst's yard.

Q. The owner of the farm?

A. Yes, sir, in his yard. We walked approximately a mile to this tenant house. After Lloyd Ray was arrested he was taken back to the car which was in Mr. Whitehurst's yard.

Q. Did you go from Mr. Whitehurst's home to this house where he was found by road or path?

A. By farm path.

Q. Cross any field?

A. I think the most of this path runs through the field. I don't recall whether any woods in there or not. Majority of it is in the field.

Q. Anything happen in respect to his making any statement on (p. 187) the way to the car?

A. I don't think he made any statement until we got to the car.

By the Court:

Q. Did you go in the house?

A. Yes, sir.

Q. Remember what was said in the house?



A. I told him he was under a rest. He wanted to know what for. I told him for the murder of Benjamin O'Neal.

Q. State what was said on the way to the car about any statement he might make?

A. I don't think anything said about any statement until after we got in the car.

Q. What was said then, if anything?

A. After he was put in the car with Mr. Manning, Mr. Gibbs and myself. Lloyd Ray on the back seat and Mr. Gibbs on the back seat. I was on the front seat, right hand side. Mr. Manning was driving. On the way to Williamston we talked to him some. I did some of the questioning and Mr. Gibbs did some. I don't think Mr. Manning did. We hadn't got very far from where he was arrested before [fol. 35] he began to tell us about the crime and how it was committed and all about it.

Q. Did anybody offer him any violence?

A. No, sir.

Q. Anybody attempt to?

(p. 188) A. No, sir.

Q. Anybody make any threats?

A. No, sir.

Q. Anybody offer him any inducement?

A. No, sir.

Q. State whether or not he was warned or anything said to him with respect to what he said would be used against him?

A. Yes, sir, I warned him and told him he didn't have to make a statement, that any statement he did make would be used against him in court.

Q. When was that?

A. After he got in the car.

Q. Was that before he made any statement?

A. Yes, sir.

(Direct examination resumed.)

Q. You say it was shortly after you pulled off in the car?

A. Yes, sir, after we got him in the car. I think that's correct.

Q. How long after that before he told you about it?

A. I couldn't say exactly how long. I say not but a very few minutes.

Q. State what he told you?

A. I don't know as I could state it word for word unless I could refer to the statement.

(p. 189) The Court: Tell us the best you can.

A. Lloyd Ray said he and Bennie were in Greenville together, had drank some whiskey, had been on Bonfler Lane and gotten in a fight with some men and that he had cut this men and that he had cut this man and he had some blood on his clothes.

Q. Which one?

A. Lloyd Ray, and that they left down there and come to the bus station. The bus hadn't come. They decided to get a taxi. They got a taxi to take them home. Left Greenville, went out 264 towards Washington, turned off of the highway up a dirt road. This road leads North from the highway. Went down the dirt road. He said Bennie told the taxi driver to turn up in the barn yard, that they couldn't turn beyond the barnyard for the road was bad. They turned up into the barnyard and Bennie held a knife around O'Neal's neck.

Q. They didn't call his name, did they?

A. I believe they called him taxi driver. I am not positive. And he took his money out of his pocket.

Q. Did he say where each were sitting, front or back?

A. I believe he said he was sitting side of O'Neal and Bennie in the back, behind. I believe that is correct. And they got out of the car. Said O'Neil had a knife. They got in a fight and tussel, fought some on the ground and got in the tobacco barn and had quite a scuffle there and come out (p. 190) of the barn and had quite a scuffle. That they knew when they left him he was dead.

Q. Did he say why they assaulted him?

A. He said they assaulted him to get what money he had.

Q. Was there any reluctance on the part of Lloyd Ray to make that statement?

A. No, sir. After he started talking he talked as freely as anyone I ever talked to.

[fol. 36] Q. It has been said by him that the car stopped en route to Williamston?

A. The car stopped. I believe, after we got to Robersonville. Broke down.

Q. He testified it stopped two times?

A. No, sir. Stopped when it broke down.

Q. Any of you get out of the car there?

A. After the car stopped on us Mr. Manning and I both got out of the car. Lloyd Ray and Mr. Gibbs still in the back. I called by radio and had a car from Williamston to come and pick us up.

Q. While you were stopped there was any pistol brought into play?

A. No, sir. There was no pistol brought into play. I had my pistol on but under my coat and under my overcoat. Lloyd Ray didn't see my pistol.

Q. You know whether Mr. Gibbs had on one or not?

(p. 191) A. I didn't see Mr. Gibbs' pistol but I imagine he had one.

Q. Was it the following night that you went back to Williamston where the statement was made by both of them?

A. We went back on Tuesday.

Q. Were you present when Bennie was arrested?

A. Yes, sir.

Q. Where was that?

A. Bennie was arrested approximately a mile or two East of Winterville on Bryant Tripp's farm at the home of Moore around five o'clock in the morning, Tuesday morning. I went in the house and when I got in the house there was a man in the first room that I entered. I went in the room to the right and Bennie was standing behind the door fully dressed with his hat on.

Q. What did you do with him?

A. Put him under arrest. Told him he was arrested for the murder of Benjamin O'Neal. We took Bennie to Greenville, changed cars and took him to Williamston, Mr. Ray Smith, Gibbs and Dorsey. Mr. Ray Smith was a fireman. He was driving my car for me.

Q. Did Bennie make any statement en route to Williamston?

A. Yes, sir, he did.

Q. Who was in the car that he rode to Williamston in?

A. Gibbs, Dorsey, Smith and I.

Q. State whether any threat or attempted violence was used on him?

(p. 192) A. No, sir. There was no threats or violence of any kind.

Q. Any inducement?

A. No, sir.

Q. Hope of reward?

A. No, sir.

Q. Was he told it would be easy on him?

A. No, sir.

Q. What was he told?

A. I warned him he didn't have to make a statement unless he wanted to and whatever statement he did make would be used against him in court.

Q. Was this said while traveling on the way to Williamston?

A. Yes, sir. When we arrested him I took him by not very far from where his father lived, took him by his father's home. Someone came to the door, I don't know whether his brother or father, and I told him we had Bennie under arrest.

[fol. 37] Q. Did Lloyd Ray's people know he was arrested?

A. I don't know. I hadn't seen his people.

Q. What did Bennie say on the way to Williamston?

A. This might not be the exact words but he told us that he and Lloyd Ray had -otten a taxi in Greenville.

Q. He tell you anything about what had happened before they got the taxi?

A. Told us he had been to Bonner Lane and gotten in a fight there and come over there to the bus station and got a taxi to take them home. After they went out 264 several miles they (p. 193) went up this dirt road, then turned up the road, then drove up in the barn yard and that the threw a knife on O'Neal and Lloyd Ray put his belt around O'Neal's hands, that they got out of the car. Bennie said he pulled O'Neal out of the car and Lloyd Ray got out of the car under the steering wheel and they had quite a tussel on the ground and into the tobacco barn. I asked him if he cut O'Neal. He said he didn't know, that they were in the tobacco barn in the dark and he didn't know whether he cut him or not. But he said he hit him one time with a brick and one time with a railing that came off of a tobacco truck and also hit him with some tobacco sticks.



Q. Was there a belt found at the scene?

A. There was.

Q. Getting up to the night the written statements were made, The Jail in Williamston is upstairs?

A. Yes, sir.

Q. Did you go up there with them to bring Bennie down?

A. No, sir, I didn't.

Q. One of them said you signed one of their names?

A. No, sir, I didn't.

The Court: I believe Lloyd Ray said the Sheriff made his mark. Didn't he say yesterday he made the mark himself?

Q. Did you write either one of their names or make either man's mark?

A. No, sir.

(p. 194) Q. The statement made in Williamston in the courthouse, were they together then?

A. Lloyd Ray was brought down from jail first and later Bennie was brought down. It was in Sheriff Roebuck's office in Williamston. Two rooms to the office. Partition door between the two rooms and this door was open between the two rooms.

Q. Why was the statement made there again?

A. To get it in writing.

Q. At that time was any inducement offered either or one of them to make a statement?

A. None whatsoever.

Q. Any threat or attempted violence?

A. There was not.

Q. Or hope of reward?

A. No, sir. Both talked just as freely all the way through about it.

Q. Did anybody slap anybody?

A. No, sir, Nobody did any cursing.

Q. Who took down their statements?

A. Mr. Arnold.

Q. He is clerk to the city police, or was at that time?

A. Yes, sir, file clerk I believe.

Q. What was done then with respect to the statements?

A. Mr. Arnold typed them.

[fol. 38] (p. 195) Q. Then what happened?

A. The statement was read to Lloyd Ray. Bennie was in the room when it was read. Lloyd Ray said he couldn't write. I believe Mr. Page wrote his name and Lloyd Ray touched the pen and made his mark. Bennie's was read to him. They were both asked if that was what happened. Both said it was. Then I asked them both if anybody had offered them any reward or promised them anything, or threatened them, or even cursed them. Both stated they had not been mistreated in any way, that the officers had been very nice to them all the way through.

Q. Did they remain there that night?

A. ~~After this was~~ done they were taken on a car by Deputy Sheriff Manning and Gibbs and taken to Raleigh.

Q. Did you go?

A. No, sir.

Q. At any subsequent time did you talk to either or both?

A. Before the September term of court Dorsey, Manning and I went to Raleigh, got Lloyd Ray and Bennie, and brought them to Wilson. On the way to Wilson I took the clothes they had in possession, had on the night it occurred, stopped on the side of the highway, took the clothes out. Each one pointed out which ones he had on, shirt, pants, etc., and both very freely admitted the crime that had been committed. Told us what had happened. Both cried about it. Said they were mighty sorry they were in it, that they would never have done it if they (p. 196) hadn't been drinking. Talked very freely about it.

Q. Make any statement at any other time in your presence?

A. I believe that is the last time I talked to them.

The Court: You brought them back from Raleigh to Wilson?

A. Yes, sir.

Q. On this trip down from Raleigh (was that when you were bringing them to court?

A. Yes, sir.

Q. To be arraigned?

A. Yes, sir.

Q. State whether or not any threat or violence or offer of violence or inducement was offered?

A. There was not.

Q. Were any questions asked or were those statements made voluntarily?

A. They were made freely and voluntarily. They talked about it very freely.

The Court: Was that Saturday night before they were put on trial?

A. This was on Sunday morning and Court was to open the following Monday.

The Court: Were they just arraigned then or tried?

A. They were brought down to be tried. They were arraigned and then I believe the Judge ordered them sent to Goldsboro.

(p. 197) The Court: And how long after that when they were tried?

A. First term of Court. I don't know whether March or April.

Q. The doctor said they were there with him I think thirty days?

A. Yes, sir.

Q. Went down under order of Judge Parker?

A. Yes, sir. They stayed in Goldsboro until the next term of court when I sent Manning and Dorsey to Goldsboro and they were brought back for trial.

Q. They had counsel when they were arraigned?

A. Yes, sir, the Court appointed Mr. Speight and Arthur Corey.

Q. They appeared for them by appointment of the Court?

A. Yes, sir, and taken after arraignment over to the jail and Mr. Speight and Mr. Corey both talked to them some time.

Q. Did Mr. Speight and Mr. Corey represent them at the trial?

A. No, sir.

Q. By whom were they represented?

A. Gates and Taylor.

(Direct examination resumed):

Q. At the Court's instance you brought them down and Messrs. Corey and Speight were appointed to represent

them. Did Messrs. Corey and Speight make recommendation that they be (p. 198) committed for investigation?

A. Yes, sir.

Q. That's the last time you had any conversation with them?

A. Yes, sir.

Q. State whether they ever said anything to you about an attorney or to see one?

A. No, sir, never did.

Q. Did you see them from the time they left Williamston that night until they were brought back to court?

A. No, sir, didn't see them until I went to Raleigh for them on Sunday before Court.

Q. Anything else pertaining to the confessions that I have failed to ask you?

A. That's all I recall.

(p. 201) Cross-examination of Sheriff Tyson.

By Mr. Gordon:

Q. You say this was brought to your attention at four or five in the afternoon on Sunday?

A. Yes, sir.

Q. And on the basis of that you went out to look for Lloyd Ray and Bennie?

A. Yes, sir.

Q. Did you obtain warrants before you saw Lloyd and Bennie?

A. No, sir.

(p. 202) Q. At the time you arrested Lloyd Ray will you tell us where your car was parked?

A. I was on Deputy Sheriff Manning's car. It was parked in Mr. L. O. Whitehurst's yard.

Q. Is there a road leading up to the yard where Lloyd Ray was found?

A. It was a path.

Q. Can you drive a car over that path?

A. Yes, sir.



Q. Did you drive up that path?

A. No, sir.

Q. How far did you park the car from the house?

A. Approximately a mile.

Q. Was it running?

A. No, sir.

[fol. 40] Q. You could have driven up that road?

A. Yes, if I had wanted to.

Q. You parked the car and walked the distance to the house?

A. Yes, sir.

(p. 205) Q. On the way to the car do you recall whether anybody else questioned Lloyd?

A. I don't recall.

Q. But you do recall that you warned him of his rights?

A. Yes, sir.

Q. Tell us exactly what you said?

A. I told him what he was arrested for, told him he didn't have to make a statement unless he wanted to.

Q. Tell him he had the right to see his lawyer or family?

A. No, sir he didn't request it.

Q. Did you tell him he had a right to see his family or counsel before he spoke to you?

A. He didn't ask me.

Q. Is there a prison in Greenville?

A. Yes, sir, there are two there.

Q. Is Greenville the capital of Pitt County?

A. County seat.

Q. How far was Lloyd Ray from Greenville at the time you arrested him?

A. I would say approximately seven miles.

Q. How far from where you arrested Lloyd to Williamston?

A. I would say approximately twenty-five to thirty.

(p. 206) Q. Will you tell us why you took Lloyd Ray to Williamston instead of Greenville?

A. Yes, feeling was running pretty high in Greenville. I didn't think it would be safe to bring him back to Greenville.

Q. Will you tell us what indications there were of this high feeling you are talking about?

A. I don't know that I could exactly explain it but I had several telephone calls about it might be dangerous for those boys to be brought back to Greenville.

Q. Will you tell us who made those telephone calls?

A. No, sir, I couldn't recall.

Q. About when can you tell us you learned about this high feeling?

A. How is that?

Q. Tell us about what time it was you learned of this high feeling?

A. I left Greenville around twelve o'clock and didn't get back there until between two and three o'clock in the afternoon and that is when I found it out.

Q. Did you hear anyone say if the boys were found they might be hurt?

A. I was advised from two or three telephone calls it wouldn't be safe to bring them back through Greenville. I did this for their own protection. Felt it my duty to protect them.

(p. 208) Q. At the time you arrested Lloyd Ray were you armed?

A. Yes, sir.

Q. Were the other men with you armed?

A. I didn't see their guns but I am sure they were.

Q. You obtained this statement, you heard this statement on the way to Williamston and knew at that time that Gibbs had obtained statement in writing.

A. Yes, sir.

[fol. 41] Q. Will you tell us why you didn't have Lloyd Ray arraigned promptly upon arriving in Williamston?

A. I couldn't have him arraigned until Court convened.

Q. Are you familiar with Section 15-46 of the General Statute of North Carolina, as follows: "Every person arrested without warrant shall be either immediately taken before some magistrate having jurisdiction to issue a warrant in the case, or else committed to the county prison, and, as soon as may be, taken before such magistrate, who, on

proper proof, shall issue a warrant and thereon proceed to act as may be required by law''?

A. Yes, sir, I have read that.

Q. Did you take Lloyd Ray before a magistrate on Sunday morning when you arrested him?

A. No.

(p. 209) Q. Tell us why you didn't?

A. That is not the usual custom when you arrest a man charged with murder.

Q. Is it the usual custom to obtain them illegally?

Objection by respondent overruled.

I ask you if it is the usual custom in your county when you arrest someone for a felony not to bring them before a magistrate?

A. No, I don't say that. We usually get a warrant for them as quickly as we can.

Q. Why didn't you do it in this case?

A. He was arrested around one-thirty and we were still continuing investigation and looking for the other party.

Q. You mean you didn't have the time to take him before a magistrate?

A. I wouldn't say I didn't have time but I felt like it was up to me and very important to arrest the other party as soon as we could.

Q. When did you arrest Bennie?

A. Bennie was arrested on Tuesday morning around five o'clock.

Q. And when did you have him in Williamston?

A. Immediately after he was arrested.

Q. Did you take him before a magistrate at that time?

A. No, sir.

Q. This was the time you already had Bennie in custody?

A. Yes, sir.

(p. 210) Q. Why didn't you take him before a magistrate?

A. There was a warrant sworn out for both of them but I couldn't tell you until I see the warrant.

Q. You don't recall when he was taken before the magistrate?

A. No, sir, not unless I could see the warrant.

Q. You have testified that you didn't have the warrant at the time you arrested Bennie?

A. Yes, sir.

Q. And will you tell the Court when you did obtain the warrant?

A. No, sir. I was notified about this on Sunday around twelve o'clock. Bennie was arrested on Tuesday and I hadn't been to bed and hadn't slept a wink during that time. I had been continuously going.

Q. Do you recall whether you obtained warrant after the statements were obtained from Bennie and Lloyd in Williamston?

A. Not unless I could see the warrant.

Mr. Moody: The papers we have show it was issued on the 8th of February and returned on the 9th.

The Court: I had thought it was agreed that both arrests occurred before the warrant was issued.

Q. Now, Sheriff Tyson, the warrant was not issued until [fol. 42] after both petitioners had been put under arrest?

A. That's correct.

(p. 211) Q. You testified, Sheriff, after these statements were obtained in Williamston the boys were taken to Raleigh?

A. That's correct.

Q. How far is Raleigh from Williamston?

A. Oh, to be guesswork I would say a hundred and fifteen or twenty miles.

The Court: About thirty from Williamston to Tarboro and seventy from here.

Q. Will you tell us why you took them to Raleigh?

A. I thought it was for their own protection than it would be to take them back to Greenville.

Q. You thought they couldn't stay at Williamston either?

A. That is the usual custom, when we have a prisoner charged with murder they are taken to Raleigh.

Q. Is it the usual custom to take a prisoner more than a (p. 212) hundred miles away from his family and friends?



A. They were not taken to Raleigh just to be away from friends and relatives but taken to Raleigh for their own protection. They could protect them and take care of them better than we can in our local county jail.

Q. You thought they would be in danger?

A. Possibility. The Sheriff of Martin County asked me Tuesday night if I would move them from there, that he was uneasy.

Q. He had heard threats?

A. I don't know..

Q. But he was concerned about their safety though they were thirty miles from Greenville?

A. Yes, sir.

Q. And they were taken to Raleigh?

A. Yes, sir.

Q. At the time you stopped at the home of Benny did you tell his parents where you were taking Bennie?

A. No, just stopped and told them we had him.

Q. Did you ever tell them thereafter where you were taking Benny?

A. They never asked me.

Q. Would you answer the question?

A. No, sir.

Q. You know whether anybody else ever told them?

A. I don't know.

(p. 213) Q. Did you ever tell Lloyd's parents where he was?

A. No. I might add that Bennie's father rode around with me practically all one night trying to help me locate him. He was very cooperative.

(p. 215) Q. Were you subpoenaed to bring those confessions with you?

A. Yes, sir.

Q. Do you have them?

A. Yes, sir.

Q. May I see them?

(p. 216) A. Yes, sir. (The witness hands papers to counsel).

Q. This document entitled "State Exhibit 32", would you identify that?

A. This is the statement taken by Gibbs in the car I [fol. 43] guess.

• The Court: That is not signed?

A. Just his mark.

Q. It purports to be notes on statement made by Lloyd Ray Daniels?

A. Yes, sir, that's right.

Q. That doesn't bear any signature?

A. No, sir.

Q. Tell me what this instrument is?

A. That is Exhibit 8 and that is Lloyd Ray Daniels and is marked witnessed by Ruel W. Tyson.

Q. Was this introduced in evidence at the last trial?

A. Yes, sir.

Q. I ask that the record indicate that the body of the alleged confession, State Exhibit 8, typed single space on one page and on a separate page is the statement, "The foregoing statement was made and signed by me this 8 day of February, 1949 in the Sheriff's office in Martin County before the following officers whom I know to be the officers whom I know to be the officers of law", and there is a mark which purports to be his mark, Lloyd's mark?

A. Yes, sir, except the names of the witnesses.

(p. 217) Q. Is it your custom where you obtain a statement to have it signed only on one page if it consists of more than one page?

A. I have handled it both ways. I have had them sign one page and sometime each page.

Q. In this case you had him sign the last page which contained no part of the confession?

A. That's true.

Q. I show you another and ask you to identify that?

A. State Exhibit 9, signed by Bennie Daniels, witnessed by Ruel W. Tyson, Lester D. Page, L. E. Manning and S. G. Gibbs.

Q. This statement has the entire body of the alleged confession on one page with a blank portion of approximately two or three inches?

A. Nearly three.

Q. And on the second page appears the following statement: "The foregoing statement was made and signed by me this 8 day of February, 1949, in the Sheriff's office in Martin County before the following officers whom I know to be the officers of law". Signed "Bennie Daniels", and witnessed. That is all that appears on the second page?

A. Yes, sir.

Q. There is no signature on the first page?

A. That is correct.

Q. Sheriff, Tyson, I wonder if we could go back over one point. At the time you took Bennie into custody and after you detained (p. 218) him did you at any time advise him of his right to see friends, counsel or family?

A. There was not anything said about counsel or family either.

Q. I take it that your answer is that you didn't advise him of his right to see friends, counsel or family?

A. No, there was nothing said about it.

(p. 219) Q. These statements obtained in Williamston, were those verbatim transcripts of what Lloyd and Bennie said?

A. Yes, they are the statements they made in Williamston.

Q. These are statements of the boys and no one else?

A. Of the boys. They were made in Williamston.

Q. Anyone dictate these except the boys?

A. The boys did the talking and Mr. Arnold took it down. [fol. 44] Q. Did you examine this after it was taken down? Did you read it to see that it was the statement made by the boys?

A. I was sitting there and heard the statements the boys made and heard that when it was read.

Q. You heard this read back?

A. Yes, sir.

Q. The statements which you heard read back were the same as the statements made by the boys?

A. I would say it was the same statement they made. Arnold took it down in shorthand. I don't read shorthand.

Q. You read it after it was typed?

(p. 220) A. I heard it read.

Q. Then those are statements of the boys in their language?

A. Yes, sir.

Q. And you have read it and heard it and these constitute statements of the boys?

A. Yes, sir.

Q. You heard Bennie Daniels say, "I, Bennie Daniel, of my own free will and accord, without promise of reward or threat of bodily harm, and after being told that this statement could be used in court against me, make the following statement", and you also heard Bennie say, "The foregoing statement was made and signed by me this 8 day of February 1949 in the Sheriff's office in Martin County before the following officers, whom I know to be officers of law"?

A. That first paragraph I don't know whether that was his exact words or not but the main body of the statement is his.

Q. That's not what I asked you. You want to change your testimony?

A. No, sir. I want to explain. The first paragraph might not be his own words but the main body of the statement, they were his words.

Q. How about the last paragraph?

A. There may be some words in the last paragraph that was written by the stenographer.

Q. Parts of this statement were not dictated by Bennie?

(p. 221) A. The main body was. There may be some words that the stenographer might have added in the first and last paragraphs but they were all read to him.

Q. "I, Laura Ray Daniels, of my own free will and accord, without promise of reward and threat of bodily harm and after being told that this statement could be used in court against me, make the following statement", and the last paragraph, "The foregoing statement was made and signed by me this 8 day of February, 1949 in the Sheriff's office in Martin County before the following officers whom I know to be officers of law"?

A. That too may not have been dictated by Lloyd Ray. There may be a few words in the first and last not dictated by him.



Q. The only pages signed by Bennie and Lloyd are the second pages which you say may have been dictated in part by Arnold?

A. That was the last page that was signed. There might be some words in the last paragraph.

Q. You don't have any doubt about it?

A. There is a possibility.

Q. Do you think Bennie Daniels said, "The foregoing statement was made and signed by me this 8 day of February, 1949 in the Sheriff's office in Martin County before the following officers whom I know to be officers of law"?

A. I said there might be some words in the first paragraph that Mr. Arnold put in there.

(p. 222) Q. Which words would you say Bennie put in?

A. I don't know.

Q. Tell me which words you think Mr. Arnold put in?

A. I don't know, I didn't read Arnold's shorthand.

Q. You read what he typed?

A. I read this.

Q. You knew this was not all —?

[fol. 45] A. Yes, sir.

Q. And yet you let him sign that?

A. That was signed as of the whole statement.

#### Recross-examination.

Q. You say when you reach the end of a page you generally go on to the next page?

A. Yes, sir.

Q. Do you go to the next page before you finish a page?

A. Sometime I do, but I don't go from one page to the other. I didn't do that. Mr. Arnold can explain that better than I can.

Q. I show you the paragraph which was signed by Bennie Daniels (p. 229) and ask you if that wouldn't fit in on that same page?

A. It would not and have left room for the signatures.

Q. Signatures could have been signed on the side?

A. Not enough margin I don't think. I wouldn't say you could have very easily have gotten the rest of the statement and signatures.

Q. You could have gotten it all on that page?

A. You could have written all across the typewriting. It could all have been put on one page. It could have been written right on top of the typeing.

(p. 242) L. D. PAGE, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Bundy:

Q. You are Mr. L. D. Page?

A. Yes, sir.

Q. At this time we are talking about you were policeman in Greenville?

A. Yes, sir.

Q. Did you go to Williamston with Sheriff Tyson and Sheriff Manning on the night we are talking about?

A. Yes, sir.

Q. Did you go upstairs in the jail?

A. I did not.

(p. 244) Q. Did you slap or hit Bennie up there?

A. No, sir.

Q. Did you slap or hit either one of them at any time?

A. I did not.

Objection by petitioners to leading questions.

Q. State whether you were there when they made the statements in the Sheriff's office?

A. I was.

Q. State whether you or any other person either threatened them, offered any violence or intimidation to make a statement or any hope of reward that it would be better for them to make a statement or anything of the kind?

A. We never offered them any reward or threatened them in any way, shape, form or fashion. The statements were free and volunteer, as much so as you and I talking in this room.

Q. State whether they were reluctant or hesitant to make [fol. 46] the statements.

A. They were not. They were very open and free with their statements.

Q. State whether they were told by anybody whether they would have to make any statement?

A. They were told they didn't have to make a statement.

Q. By whom?

A. By the Sheriff.

Q. What else did he tell them?

(p. 245) A. That they didn't have to sign the statement after it was made. To explain that statement, there has been a great-to-do about the beginning of the statement. I dictated that statement which warned them of their rights there in the beginning of the statement that it would be used against them in court, first paragraph.

Q. Do you know whether or not you dictated the last paragraph?

A. I dictated the last paragraph. The reason for the second page, there was not enough room on the first page to close it and have the signatures. If you will bring me the statement I will explain that clearly. This is Bennie Daniels' statement, "I, Bennie Daniels, of my own free will and without promise of reward or threat of bodily harm, and after being told this instrument can be used in court against me, make the following statement". By that, it was put in there so he wouldn't make it if he didn't want to, and then he made the following statement. From there on he dictated it until the last paragraph which wouldn't give room for the signatures on this page: "The foregoing statement was made and signed by me this 8th day of February, 1949, in the Sheriff's office in Martin County, before the following officers, whom I know to be officers of law." I was giving him another chance to know he was dealing with officers and it was going to be used against him in court.

(p. 246) Cross-examination of E. D. Page.

By Mr. Taylor:

Q. Mr. Page, did you hear either one of these boys say they were entitled to have a lawyer before they signed any such (p. 247) statement?

A. No.

Q. Hear anybody advise them of their rights to see their family and friends before making such statement?

A. No, sir.

Q. At the time you say those statements were made how many officers were present?

A. I don't recall but several.

Q. Any colored people there?

A. Not that I recall.

Q. Any lawyer there for the boys?

A. No, sir.

Cross-examination of S. G. Gibbs.

(p. 276) Q. As soon as you got in the car you cranked up and started off?

A. Right.

Q. Then you began questioning Lloyd Ray?

A. Yes. Asked him what he knew about Saturday night, what he knew about the taxi driver getting killed. Told him we had his clothes and how did he get the blood on them.

Q. Did you advise him of his rights?

A. Sheriff Tyson told him he didn't have to make a statement.

Q. Did you?

A. No. Best I remember I didn't.

Q. Who is the one he gave the statement to?

[fol. 47] A. I was in the back seat with a notebook and flashlight and I made the notes.

Q. I would like to see that statement. (Counsel is handed the statement). This is the statement to which you are referring?

A. That is correct.

Q. You wrote this statement down yourself?

A. That's right.

Q. Did you park the car while writing this statement?

A. I did not.

Q. You wrote this statement while the car was in motion?

A. That's right.

Q. Was there a light in the car?

A. I had a flashlight under my left arm.

(p. 277) The Court: You had done that before?

A. Yes, sir, investigating accidents and on other occasions.



Q. And while riding in the car you wrote this statement while holding a flashlight under your arm?

A. Yes.

Q. At any time prior to the breaking down of the car did the car stop?

A. No.

Q. When you were in Williamston the following Tuesday you knew you had this confession?

A. That's correct.

Q. Why did you deem it advisable to get another?

A. We wanted to talk to the boys together and get a more detailed statement and get the two statements with the two boys together.

Q. He had already confessed in this statement. Could this statement have been an official record?

A. Yes.

Q. Yet you thought you should get another statement?

A. We wanted to get more detail statement.

(p. 281) Q. You concluded from what you heard that you better take these petitioners to Williamston for safety?

A. I am pretty sure if we had carried them to Greenville they wouldn't have last very long.

(p. 282) Q. You think the community might have taken them in its own hand?

A. As much as we hate to admit it feeling was running pretty high. We took them to Williamston for their own safety.

The Court: Was it on account of race?

A. No, sir. If it had been white men it would have been the same thing on account of the brutality of the crime. Of course at that time I don't think the general public knew whether it was white or colored who committed the crime.

Q. Did O'Neal live in Greenville?

A. Yes, sir.

Q. How long had he lived there?

A. I don't know. I understand he was raised out in the county.

Q. Married?

A. Yes, sir.

Q. Children?

A. His wife was expecting a child at that time. The child was born a month or two after that was my information.

[fol. 48] Cross-examination of Oscar Arnold.

By Mr. Taylor:

(p. 315) Q. What did you do when you first got to Williamston?

A. I waited with them until Mr. Roebuck—

Q. With who?

A. Chief Page and Mr. Manning and Sheriff Tyson. Mr. Gibbs was there. I don't know whether he went with us, and another patrolman.

Q. Who went upstairs to get the boys?

A. Mr. Peel and Mr. Manning.

Q. Who was brought first?

(p. 316) A. Lloyd Ray.

Q. You know why they were brought down one at the time?

A. No special reason.

Q. They were not brought down and questioned one at the time?

A. Not that I know of.

Q. You don't know what happened in the jail when they went to get them?

A. No, I didn't go up in the jail.

Q. Tell what happened while you were taking them down, who was saying what?

A. No one saying anything that I know of except the boys talking to me.

Q. You took it down in shorthand?

A. That's correct.

Q. How long did it take you to do that?

A. I can't say the exact time we was there. There possibly an hour and a half or two hours.

Q. How long it take you to take it down in shorthand?

Q. A. I don't know how long it took them to tell me that. Fifteen minutes or twenty.

Q. And how long it take you to transcribe it?

A. About the same or twenty-five.

Q. Were you in the same room with them while you were transcribing it?

A. I was in the room with Lloyd Ray.

(p. 317) Q. Where was Bennie?

A. In the other room.

Q. You had them in separate rooms?

A. Just one door between them.

Q. What was the purpose in that?

A. They was talking to Bennie and Chief Page and I were in the room with Lloyd Ray while they were in the other room talking to Bennie.

Q. Talking to Lloyd Ray?

A. N-, typing it out.

Q. How many officers with Bennie?

A. I don't know. Three or four.

Q. How many officers in the room with Lloyd Ray?

A. Then he gave the confession?

Q. Yes.

A. Three or four.

Q. They were armed?

A. I reckon so, I never seen officers running around without being armed.

(p. 318) Q. Chief Page said, "I, Bennie Daniels"

A. Yes.

Q. Chief Page also said, "The foregoing statement is signed by me, etc"?

A. That's right.

Q. You didn't say that yourself?

A. I typed it on there.

[fol. 49] Q. Insofar as the last statement and the first statement, they are not the defendants' statements?

(p. 319) A. They didn't dictate that to me. They dictated the middle part.

Q. Yet all of that appears over their signatures?

A. Sure it does.

Re-redirect examination of Lloyd Ray Daniels:

(p. 325) Q. On your way back from Raleigh to Wilson you heard Captain Dorsey testify they stopped the car and you told them you had committed this crime. Did you tell that to Captain Dorsey at that time or any other time?

A. No, sir.

BENNIE DANIELS, recalled:

Re-redirect examination:

Q. Bennie, you heard Captain Dorsey testify that on two occasions after you had made the confession in Williamston, on one trip from Goldsboro and one trip from Raleigh, they stopped the car and you made confession that you had committed the murder?

A. No, sir, didn't make no kind of confession. Only kind I ever made between the laws was in Williamston. I made no other confession whatsoever except the time I was in Williamston.

Q. On the way from Williamston to Raleigh that night did you and Lloyd Ray have any talk about being sorry you committed the crime?

A. No, sir. That man yonder said we would get life imprisonment.

Q. Who said that?

A. That fellow with the blue suit.

Q. Mr. Manning?

A. Yes, sir, he said "I think you boys will get life imprisonment. You boys will be old when you come out." He didn't hear us say we was sorry.

Q. Who else was present?

A. Mr. Gibbs and I and Lloyd Ray.

Q. Mr. Manning and Mr. Gibbs were the only two officers?

A. Yes, sir, only two that carried us to Raleigh. I just can't remember what he said but he said, "I think you boys (p. 327) will get life imprisonment," but he said, "You boys will be old when you get out."

The Court: What made him say that?

A. I don't know.



The Court: Had you or Lloyd Ray made a statement to them?

A. Only the one at Williamston.

The Court: Were you carried to Raleigh later on in the same day the statement was signed?

A. Same night.

The Court: Mr. Gibbs and Mr. Manning take you?

A. Yes, sir.

The Court: On the way up there Mr. Manning said, "I think you boys will get life imprisonment"?

A. Yes, sir, he said, "You boys is young. You may get life imprisonment but you will be old when you get out."

The Court: What did you say to that?

A. I can't remember exactly what I said.

The Court: Did you say anything?

A. Probably said something.

The Court: Did Lloyd Ray say anything?

A. No, sir, I don't remember him saying anything.

[fol. 50] (p. 329) Testimony in re systematic exclusion of negroes from grand and petit juries phase of the case is resumed.

(p. 335) Mr. Rogge: I want to call Your Honor's attention to certain figures already in the record so that Your Honor may follow the testimony. There was a stipulation to the effect that the jury scroll book contained names of approximately ten thousand persons and that was described to Your Honor as the book in which for different years from 1941 to 1949 list of names were contained. I am directing myself to the year 1947. It is from that selection of names that the grand jury — making this indictment

The Court: Is the stipulation to the effect that for that particular year there were approximately ten thousand names in the book?

Mr. Rogge: In the jury scroll book. I now call your attention to page 141. The tabulation appears on Page 128 (p. 336) of the record of trial. Totals on tax list give through 1948 from the year 1946, according to H. L. Andrews;

15,517, which he broke down, 10,344 white tax payers and 5,173 negro tax payers. He also gave it for other years. I will read them off. It is about the same percentage  $33\frac{1}{3}$  per cent. For 1945, 14,368 of which 9,466 white, 4,902 negro; for 1944 14,573, of which 9,542 white, 5,031 negro; for 1943, 14,876, of which 9,760 white and 5,116 negroes; for 1942, a total of 15,328, of which 10,047 white, and 5,281 negro; in 1941, a total of 15,944 of which 10,846 white, and negro 5,468; for 1940, total of 16,137, of which 10,343 white, and 5,544 negro; for 1939, total 15,761, of which 10,305 white, 5,456 were negro; for 1948 16,926 of which 11,193 were white, and 5,733 negro; for 1947 total of 16,455, of which 10,894 white, and 5,561 negro.

MURRAY GORDON, being first duly sworn, testified as follows:

Direct examination.

By Mr. Rogge:

Q. Will you state your name?

A. Murray A. Gordon.

Q. Where do you live?

A. New York.

Q. Your business or profession?

A. I am an attorney.

(p. 337) Q. Can you give me your association?

A. Member of the firm of Rogge, Fabricant, Gordon and Goldman.

Q. How long has that association been existing?

A. Since September, 1947.

Q. Mr. Gordon, have you made an examination of the documents on this table which have been listed as "P-1" through "P-5"?

A. Yes, sir.

Q. Will you tell us what examination you made?

General objection by respondent to all the testimony about to be given by the witness. The objection is overruled.

A. I first went through the registration books for each precinct, each of the twenty precincts.

Q. Referring to these twenty volumes

A. Yes, and in going through I took down the names of all those persons designated as "negroes" and who are registered in the year 1946 or previously. I then compared those names with the jury scroll book for the comparable township or precinct.

Q. This volume which has been referred to as one of the books "P-1" through "P-5"?

A. Yes. In this fashion I was able to ascertain which of [fol. 51] the persons who were negroes were on the jury scroll book and which (p. 338) were not, that is those negroes whose names were in the registration books and whose names appeared in the jury scroll book.

Q. This would be the registration through the year 1946?

A. Yes, sir. I then went to the tax list and compared each name in the negro portion of each township with the names which appeared in the comparable township in the jury scroll book. In this way I was able to ascertain which persons appeared in the negro section of the tax list and also appeared on the jury scroll.

Q. Did you put those tabulations and summaries on sheets of paper?

A. I did.

Q. You have one for each voting precinct?

A. That is correct.

Q. Will you hand them to me?

The sheets of paper on which the tabulations referred to appear are marked "P-6A" through "P-6U" inclusive.

Q. I now hand you documents marked P-6A through P-6U for identification. I ask you if those are the tabulations and summaries which you prepared as a result of the process which you have just finished describing for us?

A. Yes.

(p. 339) Petitioners offer in evidence the sheets of paper containing the tabulations and summaries identified by the witness Murray A. Gordon, as follows:

P-6A Ayden Township

P-6B Beaverdam Township

P-6C Belvoir Township  
 P-6D Bethel Township  
 P-6E Carolina Township  
 P-6F Chicod Township (No. 1)  
 P-6G Chicod Township (No. 2)  
 P-6H Chicod Township (No. 3)  
 P-6I Chicod Township (No. 4)  
 P-6J Faulkland Township  
 P-6K Farmville Township  
 P-6L Fountain Township  
 P-6M Greenville Township (General)  
 P-6N Greenville Township (No. 1)  
 P-6O Greenville Township (No. 2)  
 P-6P Greenville Township (No. 3)  
 P-6Q Greenville Township (No. 4)  
 P-6R Grifton Township  
 P-6S Pactolus Township  
 P-6T Swift Creek Township  
 P-6U Winterville Township

Q. How many names of negroes in the twenty voting registration books for Pitt County did you also find in the jury scroll?

A. 140.

Q. Leaving aside those names where there were identical names for white and negro persons in the tax list or in the voting registration books for the same precinct or township, how many names did you find added to the jury scroll book for the negro sections of the tax list for 1946?

A. Three.

Q. You mean to tell us out of more than five thousand names you found only three added?

A. Yes, sir.

[fol. 52] (p. 340) Q. Can you tell us by looking at the exhibit the names of these three people?

A. Yes, sir. Belvoir Township Mr. George Winberly, Grifton Precinct, Mr. M. C. Dixon and Mr. Isaac Duggins.

Q. These two that you found in the Grifton Precinct did you find those in alphabetical order?

A. No, sir.

Q. Where?



A. They came at the end of the list of Grifton Precinct and out of alphabetical order.

Q. Did you find any precinct indication in the jury scroll book?

A. Nothing to indicate the township from which they came.

Q. Can you indicate in the book where you found two of these three names?

A. Yes. (The witness indicates.)

Q. Did you find any other names out of alphabetical order in the jury scroll book?

A. In that Grifton precinct one other name out of order. I think his name was Smith. And at the end of Ayden township there were a list of names which didn't belong to the Ayden township. They were from various other townships.

Q. Aside from these two exceptions was the jury scroll book in alphabetical order?

A. Yes, sir. At least by the first letter of the name.

(p. 341) Q. Did you hear Mr. Joyner's testimony that he went first to the registration books?

A. Yes, sir.

Q. Did you find any indication in the alphabetical order that bore out his statement, compare names on the scroll book with the names on the voting list?

A. Yes, very often you find same sequence of names appear in the jury scroll book as appeared in the registration books. This was not always true but frequently true.

Q. I notice on these pages the letter "R", the letter "T" with a number after it, and sometime the designation "RW" or "WR". Tell us what you mean by those symbols?

A. When we went through the registration books we took all the names of negroes registered for 1906, or earlier, checked it against the jury scroll book, wrote all those names down, put those names either down in a list called "jury scroll" or that portion called "Not on jury scroll", and if a person's name appeared on the registration books we put the letter "R" next to it.

Q. The letter "R" means this name came from the voting registration books?

A. Means it appears in the voting registration list.

Q. What does the letter "T" indicate?

A. When we found the name in the tax list, that is the negro section of the tax list, which was also on jury scroll we would (p. 342) put that name down and put the letter "T" and the number that indicated the ticket number in the tax list of the individual. We didn't put down names of all negroes whose names appeared in the tax list and didn't appear on jury scroll because that would be in excess of five thousand.

Q. What does "WR" mean?

A. On occasions we found that the same name which appeared in the jury scroll book could be attributed to a white person and a negro. Where we found the name was also negro we put the name down but indicated that name also appeared as belonging to a white person in the register of the voting registration books.

Q. How many instances where you found identical names for white and negro persons in the same voting precinct or township?

A. We never indicated there was an identity of names unless it was the same name in the same township and in the [fol. 53] same precinct unless we found the identity to be that close.

Q. How many instances of that did you find?

A. I have to check my notes on that. Forty-two.

Q. Leaving aside the identity of names in these forty-two instances, how many names of negro persons did you find in the jury scroll book for 1947?

A. One hundred and forty three names.

Q. And with the identical names?

A. One hundred and eighty five.

(p. 343) Q. Since you are also my partner and I rely on you very greatly have I covered the entire examination or are there additional facts in this summary you want to call to the Court's attention?

A. I would call the attention of the Court to the fact that the total number of negroes registered in 1946 throughout Pitt County was two hundred and fifty-nine.

The Court: As appear on the voting book?

A. Yes, sir.

Q. That is through the year 1946?

A. Yes, sir. This is a permanent registration.

The Court: You referred once or twice to "We found this". Who were your helpers?

A. I was assisted by Mr. Johnson, who is here today, an attorney whom I met through Mr. Gates, and by Mr. Williams and Mr. Borekman. At all times there was a member of the staff representing the respondent present.

Q. Was there a checking by the respondent of the summaries?

A. No, sir.

Q. You arrived at that yourself with the aid of the persons you mentioned other than Mr. Brogden or someone for the respondent?

A. Yes, sir.

Cross-examination of Murray A. Gordon:

(p. 348) Q. When you found a name, we will say James Jones, and found another name, James E. Jones, what did you do to that?

A. You mean James Jones in negro tax list and James E. Jones in the scroll book? I think we wouldn't list that as a negro name. Wherever there was such question, either spelling or missing initial, we would check back with the registration book or white section of tax list and invariably you find the name accounted for in those two sources exactly as appeared on the scroll. I found in instances where you could find exact duplicate of the name either in the tax list or registration list.

Q. Didn't you find some names that were not on the registration (p. 349) books, tax scroll and scroll books?

A. You mean white names?

Q. Anybody.

A. I can only answer in this way. That we accounted for every name of a negro on the registration book. It appears either on the jury scroll or we listed it as not being on jury scroll. So every name of negro appearing on the registration book is here.

Q. Didn't you find some names not on the registration book, white and negro, that were on the tax scroll?

A. You mean jury scroll?

Q. Jury scroll?

A. That didn't appear either in registration or tax books?

Objection by Petitioners.

Mr. Rogge: The testimony of Mr. Joyner is that he went first to the voting registration book and from there to the tax list, and handed it to the commissioners and—

A. I found no names of negro on jury scroll book that [fol. 54] was not on tax list or registration.

Q. Didn't you find both?

A. I didn't check the white names on jury list to see whether they appeared on the tax list or registration.

The Court: The testimony is that the jury scroll is made up entirely from registration books and tax lists.

(p. 399) W. J. SMITH, is recalled for further examination.

Recross-examination.

By Mr. Rogge:

Q. You were previously sworn and testified?

A. Yes, sir.

Q. And I believe it was your recollection that although certain names were selected none were added on the list that came to you?

A. That is correct.

Q. Do you recall when it was that you got this list from Mr. Joyner?

A. First Monday in June is my recollection on it.

Q. And at that point of time you had which township?

A. Bethel, Belvoir, Carolina and Pactolas.

Q. Now do you recall just what it was that Mr. Joyner gave you in June?

A. Mr. Joyner gave us a list of names at the board meeting in June. These names were by townships.



Q. And you got four lists of names, Bethel, Belvoir, Carolina and Pactolas?

A. Yes, sir.

Q. If you will look at the tax list you will find for Bethel Township there are on that tax list 352 people who are negroes but that on the jury scroll there are only two, J. B. Chance and Salomi Armistead McNair. I want to know what process you went through to eliminate three hundred and fifty names of negro (p. 400) persons from that list?

A. I don't know the process of any elimination. The list was submitted to us by Mr. Joyner. In my looking it over very few deletions made. Only those dead, of my certain knowledge were dead.

Q. If you will take the tax list for Bethel Township and look at the list of negro taxpayers and then look at the jury scroll book you will see they have all been eliminated except two names. That elimination must have taken place somewhere. I want to find out where it took place?

A. That I don't know. The list that came to me was a consolidated list of all the various sources from which he got the names.

Q. Made out four lists?

A. Yes, sir, consolidated for each township. I didn't get a list of the registration books or tax group. I got a list that was consolidated on each side of the paper like this.

Q. You know that the tax book is divided?

A. Yes, I am familiar with that.

Q. You can run down the second list of alphabetical names in this book for Bethel which that sheet indicates totals three hundred and fifty two and the only two names you will find on that jury scroll are Messrs. Chance and McNair. Do you recall any of them?

A. I recall them.

(p. 401) Q. You know Mr. Chance?

A. Yes.

Q. Know McNair?

A. Yes.

Q. Would you say that both of them passed the necessary qualification and intelligence for jury duty?

[fol. 55] A. Very definitely.

Q. They are on there?

A. Yes, sir.

Q. Tell what the basis was for excluding the remaining three hundred and fifty which are in the negro portion of the tax list for Bethel Township?

A. I don't know that they were excluded.

Q. You may come down and compare the jury scroll list for 1947 with the tax list and I think you will find that to be a fact. This is a township in your district?

A. Yes, my own township. I know there are more than two on there, on the negro tax list.

Q. There are three hundred and fifty two. But you won't find more than two of those names in the jury scroll book which means three hundred and fifty out of the three hundred and fifty two were left out. I would like to have that process explained.

A. That's something I don't know about.

Q. Can you name any other negroes who are on the 1946 tax list for Bethel Township other than the two listed on that page which (p. 402) are in the 1946 jury scroll?

A. I am not familiar with the jury scroll. I have never seen it. The thing we passed on was on a list like this and was clipped up.

Q. And you passed on it before it was clipped up?

A. Yes, sir.

Q. Any other negro other than the two listed on page 6-D which you recommended to the commissioners?

A. I think so but I don't recall them.

Q. You want to look at the jury scroll and refresh your recollection as to any other names you recommended go in the jury scroll book?

A. I don't know. I didn't know it existed until I came in this court. The list came to us in this form. I wasn't present when the list was clipped.

Q. You were the commissioner who represented Bethel Township?

A. Correct. /

Q. Can you name any other negro than the two on that list that you recommended for jury duty from that township?

A. I can't. I don't remember.

Q. You want to take the list of names that finally went in the jury scroll book, all the names decided on by the com-

missioners went in here, you think that would refresh your recollection as to any recommendation you made?

A. The only thing I would refresh my recollection on would be (p. 403) people who lived in that particular area. Whether they were on that list I don't know. I don't recall.

Court adjourned Wednesday, Dec. 20, 1950 at 5:00 P.M. and reconvened Thursday, Dec. 21, 1950 at 10:00 o'clock A.M.

Both petitioners are present in court.

Examination by Mr. Rogge (continued):

Q. Mr. Smith, you know one of these townships better than another?

A. Yes, sir.

Q. Which one?

A. Bethel.

Q. Is that your home?

A. Yes, sir.

Q. How long have you lived there?

A. Forty-eight years.

Q. You knew more qualified negroes than Messrs. Chance and McNair?

A. Yes, sir, more than that.

Q. How many did you know of the negro population?

A. I suppose I knew eighty-five per cent.

[Vol. 56] Q. Of the negro population too?

A. Yes, sir.

Q. You would tell us you knew about one-third of the names in Carolina, Pactolas and Belvoir?

A. Yes, sir.

(p. 410) Q. On this list forty one you don't know, according to our calculation. Did you make any effort to try to find out what their qualifications were for jury service?

(p. 411) A. I made effort to find out about everybody on the list whom I didn't know.

Q. From whom did you make an effort?

A. Various people.

Q. You didn't name them the other day?

A. Not in Bethel I didn't.

Q. You told us about consulting Paul Davenport in Pactolas and the Hollands for Belvoir. I would like to.

A. I would like to make a statement about my physical condition. Between the first meeting in June, when we received this list, and before we turned it back in I suddenly began to lose my vision in my right eye and found that surgery was necessary and they placed ten point glasses on my eyes in June with instructions not to read. I had to wear these glasses about a year. I had to have help in order to get this thing done and I recall very distinctly getting the people in my own business who knew the people as good as I did, or better, to help me.

Q. With whom did you sit down and talk about the forty one you didn't know?

A. I didn't select the forty one out. I just went over the list and tried to determine the ones I thought were qualified.

The Court: You went over the list and most of them it appears you knew. From time to time you came across the name of an individual you didn't know. Did you automatically (p. 412) eliminate that individual or did you make some investigation and if so with whom did you talk about those?

A. I talked with four different people in my own office. When we came to a name none of them knew I felt something wrong about it.

Q. You nor the four you consulted in the office didn't know a name you didn't use it?

A. Yes, I would qualify that by saying there may have been a few about whom I discussed the matter with the policemen and probably the Mayor's office of Bethel.

Q. You still ended up with some of those you had no information?

A. Correct.

Q. You mean to tell us out of three hundred and fifty-two, or thereabouts, having eliminated a few on estates, you ended up with only two in your township with the necessary qualifications?



A. So far as that tax list is concerned. There are two or three others on the jury scroll list.

(p. 413) Q. From Bethel Township?

A. Yes, but not on the tax list. Carrie Allen. Also Mrs. Boston Chance.

Q. Wife of J. B. Chance?

A. Yes, sir.

Q. Is she on this jury scroll?

A. I think so.

Q. Will you find it for me?

A. There is Mrs. Carrie Allen and Mrs. J. B. Chance and J. B. Chance.

[fol. 57] Q. Out of the three hundred and fifty those are the only ones you would mention in Bethel Township?

A. Yes, sir.

The Court: Have you been over the list of all the jurors whose names are on the jury scroll in Bethel Township?

A. Yes, sir. Yesterday afternoon after court.

Q. And you found how many?

A. Five.

Q. Two that have been mentioned before?

A. Mrs. Chance and Carrie Allen and one more.

Q. Was some other person with you when you went over it?

A. No, a group.

Q. You think there were five?

A. Yes, sir.

(p. 414) Q. Could there be more than one Mrs. Carrie Allen?

A. Yes, sir.

Q. Is there also a white woman by the name of Carrie Allen?

A. Yes, sir.

Q. I call your attention to the fact that on the registration for Bethel Township there is a Mrs. Carrie Allen checked as white?

A. Yes, sir.

Q. Is the Carrie Allen on the jury scroll a white woman or negro.

A. I don't know. It could be either.

Q. Now the list you had before you as one of the members of the board of county commissioners came either from the registration list or from the tax list?

A. I think consolidated list of both.

Q. Can you tell me if you can find a Mrs. Carrie Allen, a negro, in either one?

A. According to this record that is white. There is not one on here.

Q. Can you now tell us on the basis of that that the Mrs. Carrie Allen in the jury scroll is the white Mrs. Carrie Allen?

A. I cannot because the only white Mrs. Carrie Allen I know I think lives in Martin County, just across the line, but I am not certain of that.

Q. The address is here isn't it?

A. I guess so. It would be on the registration book.

(p. 415) Q. Don't we have an address for her in Bethel? She is registered over there?

A. Yes, sir, Robersonville, N. C. However, she could live in Pitt County and get her mail in Robersonville.

Q. I have you that Mrs. Carrie Allen on the scroll-book is the same Mrs. Carrie Allen listed from Bethel. You told us you added no names to the list?

A. I did not. I deleted some. So far as I know I added none.

Q. Explain to me how it could be in there then the Mrs. Carrie Allen who is registered as white in the Bethel registration book?

A. I don't know. I would be glad to accept that.

The Court: Considering the record I think it must be the white woman.

Q. Now let's go to Carolina Township. That is one of your four townships?

A. Yes, sir.

Q. You can look at the tax list and find on there names of two hundred and thirty six negroes and not a single one on the jury scroll. Tell us how that happened?

A. They were eliminated for the same reason.

Q. Who did you consult about that?

A. Several people in Carolina Township. Mr. J. H. Bernhill, Jr., for one.

Q. You didn't mention him the other day?

A. You didn't ask me. You didn't get to Belvoir.

(p. 416) Q. How many on that list of two hundred and [fol. 58] thirty six for Carolina Township do you know?

A. I don't know how many I know of them.

Q. Can you run down the list and tell us whether you know any in Carolina Township?

A. Yes, sir.

Q. Will you run down the list and tell us how many you know in Carolina Township? (The witness does as requested.)

A. I know eighty.

Q. And how many of the others that you don't know did you check on to find out?

A. I did the same thing. Used the list. One of our commissioners helped us some. He was born and reared in Carolina Township, Mr. Perkins. I had two men I recall who helped me specifically with Carolina Township.

Q. How many of the remaining one hundred and fifty that you don't know did you get the requisite information?

A. I think the majority of the list was gone over.

Q. But there remain a substantial number you didn't have sufficient information that you left them off?

A. Somebody told me in each instance about the ones I didn't know.

Q. You say in your home township there were some you didn't have specific information on and you left them off. Didn't you do the same thing with Carolina?

A. Might have been some. I knew the Bethel.

(p. 417) Q. Pactolas Township, out of one hundred and twenty-six none on the jury scroll. How many of those do you know?

A. Very few. Probably ten or fifteen.

Q. The rest you don't know?

A. That is correct.

Q. You checked on Pactolas with Paul Davenport?

A. Either Mr. Paul Davenport or his son or Mr. Noel Lee. He came and worked with me several hours.

Q. Paul Davenport is white?

A. Yes, sir.

Q. How about Neal Lee?

A. Yes, sir, white.

Q. Did you check with any negroes to find out about those you didn't know?

A. No, sir, I didn't.

Q. In Pactolas did you end up with some on which you didn't have any information as in Bethel?

A. That's true.

Q. The remaining Township is Belvoir, one hundred and sixteen negroes on the tax list but only one got on the tax scroll, George Winbrell.

A. Same situation there.

Q. How many of the one hundred and sixteen did you know?

A. Probably half of them.

The Court: Did you indicate on the tax book whether they are non-residents of the county?

A. Yes, sir.

(p. 418) Q. Suppose you go through the list from Pactolas and tell us how many you know?

A. I wouldn't say over ten or twelve.

Q. Then go to Belvoir.

The Court: How many out of that number are non-resident or persons deceased? after the tax books were made up?

Mr. Rogge: Tell us which are estates or non-residents.

A. There seems to be four estates and non-residents.

Q. Now run through it and tell us how many of the one hundred and sixteen you know? (The witness does as requested.)

A. Sixty-two.

Q. Out of the one hundred and sixteen you know sixty two and the balance you don't?

A. That's right.

[fol. 59] Q. As to the balance in Belvoir, one hundred and twelve, it leaves about fifty you don't know. Did you leave off in Belvoir some that you didn't know?

A. It may have been such.



(p. 419) Q. Out of approximately eight hundred and thirty names in your four townships who are on the negro tax list, Mr. Smith, only three or four end up on the jury scroll. How do you explain that?

A. Simply by not being qualified under the law.

Q. Or you not having sufficient information?

A. I think I had sufficient information.

Q. You told us one time you didn't have sufficient information on all and now you say you did?

A. There were not but a few in each township none of us could trace.

Q. And those you left off?

A. Yes, sir.

Q. So that out of more than eight hundred you you end up with about four?

A. Whatever is there. I don't know the number.

(p. 424) J. VANCE PERKINS, having been first duly sworn, testified — follows:

Direct examination.

By Mr. Rogge:

Q. State your name and address?

A. J. Vance Perkins. I live in Greenville.

Q. Have you held any county office there?

A. Yes, sir, on the board of county commissioners from December 1, 1946 to December 1, 1950.

(p. 425) Q. What townships were in your district?

A. Greenville.

Q. That is divided into four election precincts?

A. Yes, sir.

Q. The total number of negroes on the tax list is fifteen hundred and thirty seven from Greenville. How many of those do you know

A. I couldn't say. I probably know a third of them.

(p. 426) Q. You think you know roughly one-third?

A. Yes, sir.

(p. 427) Q. Tell us what you did with the list of names?

A. I checked it over. Checked it for selection of juries for that particular time.

Q. Tell us what you did?

A. Went over the list. I remember going to Mr. Henry Andrews, tax collector.

Q. He is white?

A. Yes, sir.

Q. You didn't check this list with any negro?

A. No, I went over the list and then went to Mr. Andrews to see if he knew some I didn't know.

Q. You and Mr. Andrews between you didn't know all of them?

A. No, sir.

Q. How many did you end up with that you had the information half of them?

(p. 428) A. Probably so.

Q. Suppose you take the negro section of Greenville and go through there and go down the list and tell us those that you think are qualified?

A. I don't know whether I can do that or not. Here is Charlie Allen, Lawrence Anderson, Jr.—

[fol. 60] The Court: Are you calling the names of those persons you consider were qualified for jury service?

A. Yes, sir.

Lonnie Darinbill, Dr. J. A. Battle, W. H. Davenport, and W. H. Davenport's wife. I don't know her name.

Q. Were they both qualified?

A. Yes, sir. Dennis Dupree, Walter E. Flannagan, George Gorham, Jr., Dr. C. R. Graves, Samuel Hemby, Jr., Lawrence Hines, Nelson Hopkins.

Mr. Bundy: Doesn't he live in Faulkland Township?

A. Maybe so but they have it here Route 1.

Andrew Jenkins, John Henry Knox, Chester Mooring, Rev. J. H. Nimmo, W. K. Norcott, Wiley Norcott, Frank

Norris, Jr., Lawrence Payton, Charlie Spell, George Streeter, J. D. Taft, Sylvester Tyson, G. R. Whitfield, Sylvester Wilson, Shade Wilson.

Q. Mr. Perkins, you gave us a list of twenty seven names. Aside from W. H. Davenport and G. R. Whitfield, who are on the voting list for Greenville No. 1 Precinct, and Sylvester Wilson and Frank Norris on the voting list Greenville No. 3 Precinct, I (p. 429) want to know if you find a single one of those as qualified on the jury scroll for 1947?

A. I think that is all I see.

Q. Aside from the four who are also registered as voters you find not a single one of the twenty-seven names you gave is on the jury scroll?

A. Doctor Battle is a professional man and he wouldn't serve.

Q. Aside from Davenport, Norris, Whitfield and S. Wilson, who are registered as voters, aside from those four you find none of the remaining twenty-seven in the jury scroll book?

A. The book you give me, no, sir.

Q. Now, if those people are qualified how come they are not in the jury scroll book?

(p. 430) A. That I couldn't say.

Q. You told us Greenville was your district?

A. That's correct.

Q. Do you have any explanation?

A. No. A lot of them on that book not on the scroll book, white and colored too.

Q. I am talking about the twenty-seven.

A. I expect a lot qualified in the whites who are not in the books.

Q. That is not responsive to my question.

A. I don't know.

Q. Now I am going to show you a list of those you can find in the jury scroll book if you wish to which are on there which you didn't give to us and which are on the registration list. Do you know I. A. Artis?

A. I don't believe so.

Q. That name is on the jury scroll. You know how it got there?

(p. 431) A. I consulted two or three for names that I didn't know myself.

Q. You said no names were added?

A. I said if they were I didn't remember.

Q. What is your best recollection whether you added names?

A. I don't remember adding any.

Q. Run down this list on Greenville Township No. 1 on the left hand side of the page except the last name which is registered as white. Aside from Whitfield and Davenport how many others do you know?

A. I know Allen.

Q. What about Lillian Artis?

[fol. 61] A. No, sir.

Q. Travis Allen?

A. I do.

Q. David L. Daniel?

A. Don't know him.

Q. Charlotte Flannagan?

A. I don't know her.

Q. Mamie G. Garrett?

A. Might know her.

Q. Graves?

A. Doctor Graves.

Q. James W. Graves?

A. No doubt I know him.

Q. Elijah J. Little?

A. No.

(p. 432) Q. J. C. Larence?

A. No.

Q. J. W. Moye?

A. Don't know him.

Q. It is in the tax list?

A. I don't know.

Q. What about H. J. McLawhorn?

A. No.

Q. Sallie A. Phillips?

A. Don't know her.

Q. Addie Spence?



A. No.

Q. Lillie R. Taylor?

A. No.

Q. Nearly all those names you don't know and you find them in the jury scroll. Can you account for it?

A. No.

Q. It was your district?

A. Yes, sir. I am not saying any were added or not.

Q. How did they get on the scroll book?

A. I don't know unless somebody put them on there.

Q. Greenville Township voting precinct No. 2, names on the jury scroll, on the left hand side of the page aside from W. H. Davenport, whom you have identified will you tell us how many of those you know?

A. I think I know James and J. H. Wooten and I might know (p. 433) Will Shearin.

Q. Out of nine you might know two?

A. Yes, sir.

Q. How did they get on the list?

A. I don't know.

Q. This is your voting precinct?

A. Yes, sir, same answer for all four.

Q. Look at Township No. 3 and go down the first list and second list and tell us how many of that list you know?

A. I think I know Joseph Donaldson and Ernest Dupree and Thaddeus Forbes. I know Frank Norris and Henry Payton and there is Sylvester Wilson and I think I know L. W. Woofen.

Q. That is seven out of forty-five names. Do you know how the balance of the thirty eight names in Greenville Township No. 3 got on the jury scroll?

A. No, sir.

Q. Look in Greenville No. 4 on the left hand side and tell us how many of that list you know?

A. S. I. Salter. I know Herbert Whitehead, LeRoy Barnes, LeRoy Hoddard.

Q. You know four out of that list?

A. Something like that.

Q. And your answer is the same, you don't know how those names got on the jury scroll?

A. Yes, sir.

(p. 437) Re-direct examination.

By Mr. Rogge:

Q. Can you give us the name of a single person that was [fol. 62] added to the jury scroll list who doesn't appear in the voting registration?

(p. 439) A. No, sir, I can't.

(p. 439) Re-direct examination.

By Mr. Bundy; W. J. Smith:

Q. Can you recall any colored person from whom you sought assistance in making up the jury list?

A. The only incident two negroes who are on the advisory board of negro education, called them in and asked them to go over with me the question of the school teachers to find if any of them residents.

Q. School teachers generally come and teach during the school session?

A. Yes, sir.

(p. 440) Re-recross examination.

By Mr. Rogge:

Q. Is that the only inquiry you made with the negroes?

A. With the negroes.

That is all.

The Court: Mr. Smith is excused.

M. D. HODGES, having been duly sworn, testified as follows:

Direct examination.

By Mr. Rogge:

Q. State your name?

A. M. D. Hodges.

Q. Where do you live?

A. Grifton, Pitt County, North Carolina.

Q. Grifton is also a voting precinct?

A. Yes, sir.

Q. But it is divided into township, part in Ayden Township?

A. Yes, sir, and Swift Creek.

Q. In two counties?

A. Yes, sir, one in Pitt and one in Lenoir.

Q. Did you hold a county office in 1947?

A. Yes; sir.

Q. What?

A. Member of the Board of County Commissioners.

Q. From when to when were you a member?

A. From June 1940 to date.

Q. You are still a member of the board?

(p. 441) A. Yes, sir.

Q. Were you chairman of the board?

A. From the first Monday in December, 1948 up to date.

Q. Became chairman the first Monday in December, 1948 and held that office since?

A. Yes, sir.

(p. 443) Q. Go through the Ayden list and give us the names of negroes you think are qualified to vote, the names you thought in 1947 were qualified? That is when you did this job?

A. Yes, sir. M. C. Dixon. You want the ones I think qualified now or then?

Q. The ones in 1947. I want to know all those on whom you passed judgment in 1947, you thought at that time were qualified?

A. H. R. Reaves.

Q. What line is that on?

A. 48.

Q. You have given us two names?

A. That's right.

Q. Look at line 1414, there is the name of William Evans.  
[fol. 63] A. I see the name.

Q. You think he was qualified?

A. I don't know.

Q. Then suppose you tell us how a man you didn't know whether he was qualified or not got on the jury scroll?

A. That's very easy. I don't need the book to tell you. When I got this list I first went over the list and went to Ayden and got Mr. Dixon and Mr. Cannon——

Q. White or colored?

A. White.

(p. 44) Q. Did you confer with negroes?

A. No, for the reason I couldn't get any unless we paid them. I went to his home and stayed until about twelve o'clock and went over the list. I didn't know all the people in Ayden. They didn't know them all and people we didn't know naturally were rejected. I also——

Q. Those whom you didn't know you rejected?

A. Absolutely. That's common sense. I went there and interviewed those two men.

Q. If the people with whom you consulted and you didn't know the qualifications of a person they were excluded?

A. Sure.

The Court: That would apply to the negro race or both races?

A. Both races.

We went through the entire list. I suppose I spent six hours at Mr. Dixon's home.

Q. Out of a total of five hundred and eighty nine there were two you say were competent?

A. Yes, sir.

Q. Nellie——, you know her?

A. I don't know her.

Q. You know how she got on the jury scroll book?

A. She got on there the same way the others got on there.

Q. You remember whether you put additional names on the list?



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A. I had three lists.

(p. 445) Q. Know whether you added any names?

A. I think two. M. C. Dixon and Isaac Duggins. He lived in Swift Creek Township and Dixon lives in Ayden Township.

Q. I call attention to the page in which M. C. Dixon and Isaac Duggins were added but without the township added. They were put on at your suggestion?

A. Yes, when I went through it I saw they were not on there.

Q. Are they negroes?

A. Yes, sir. So far as the township not being there that was a typographical error. Put on there to help the Sheriff out when he goes to summon them.

Q. Now you say that on the list you had M. C. Dixon and Isaac Duggins were not on there?

A. That is the best of my recollection.

Q. You had those names added?

A. Yes, sir.

Q. They are added out of alphabetical order?

A. Yes. It won't practical to type this over.

Q. Now let's look in the tax book and see if you can find M. C. Dixon and Isaac Duggin in the tax book?

A. Yes, I just saw Dixon's name awhile ago.

Q. M. C. Dixon is in line 1379 in the tax book?

A. Yes, sir.

Q. Let's look for Duggin in Swift Creek. You find Isaac Duggin in 6034?

(p. 446) A. That's right.

Q. Now if the list that you had didn't have those two names then the list you had was not made up from the tax ledger?

[fol. 64] A. I wouldn't say that. It's human to make mistakes. Anybody can leave out a name.

Q. You think M. C. Dixon from Ayden Township and Isaac Duggin from Swift Creek Township were just left out?

A. I am sure they were.

Q. Isn't it a fact that the list you had was made up from the voting registration list and not from the tax list and doesn't this help establish it?

A. No, sir, absolutely not.

Q. Did I ask you about the other names? What about J. W. Ormand and Mrs. J. W. Ormand?

A. I don't know.

Q. How did they get on the jury scroll?

A. Probably when I went to get help these people recommended them.

Q. What about Harvey Phelps?

A. Might have been the same way.

Q. What about John Thrower?

A. Don't know him.

Q. You remember specifically suggesting that two names be added?

A. Yes.

(p. 447) Q. You remember suggesting that any others be added?

A. No, sir.

Q. You remember adding any names at the request of anyone else?

A. No.

Q. Then how do you account for the names you don't know? People from Ayden Township who are on the jury scroll?

A. These two men who helped me probably recommended them.

Q. But you say you don't know of any name being added outside of these two mentioned? What I have, you had before you that list made up from the registration book and not from the tax book. If you can give me a better explanation I would like to have you do it.

A. I can't do it. It was made from citizens of Pitt County.

Q. Out of the whole five hundred and eighty nine names you came up with two you think were qualified in 1947?

A. Yes, sir.

Q. Look through Swift Creek Township and read off the names to us you think are qualified?

A. You already have Isaac Duggins. Matthew Garner, Line 656. I think that is it.

Q. You have one from there in addition to the one you have already mentioned?

A. Yes, sir.

Q. So that out of eight hundred and thirty eight people in your district there are only three that you thought were (p. 448) qualified?

A. At that time. That's right.

Q. Can you tell us why Matthew Gardner is not on the jury scroll book?

A. At that time I didn't think so.

Q. Didn't you understand my whole inquiry was as to who you thought was qualified in 1947?

A. I will withdraw it. I didn't know him well enough then to say he was qualified.

Q. Your testimony is that although you know him well enough now to say he is qualified you didn't know in 1947?

A. That's right. And with the information I had at hand I couldn't confidentially put him in the box.

The Court: What does he do?

A. Small farm, one-horse farm.

Q. You have been on this board since 1940, ten years?

A. Yes, sir.

Q. Chairman for two years?

A. Yes, sir.

[fol. 65] Q. Can you tell us how you happen to have a much lesser list of names for 1945?

A. Like everything else the courts are expanding and it takes more jurors. We had to go through a second time. We decided we didn't want to put that handicap on a person except every two years.

(p. 449) Q. What process did you go through with in 1945? And I will tell you that the record shows that the list of taxpayers was about fifteen thousand. How did you reduce that to approximately a thousand names in 1945?

A. I don't remember. I know about 1943.

Q. Tell us about that?

A. I went one day to the auditor's office. Mr. Cowan was auditor and tax supervisor, and asked where he was. They said he had gone to California. He had a son at the point of death.

Q. What did you do?

A. Went through the tax books.

Q. You will find for 1943—look at that since you helped get it up.

A. I didn't help. I did it all.

Q. I think you will find less than a thousand names?

A. Yes. As I told you we realized we didn't have enough.

Q. What did you do in 1943?

A. Went through the tax book.

Q. Go through that list in 1943 and tell us how many on there are negroes, if any?

A. I don't know whether I can do that.

Q. You may come down and I will recall you later.

(p. 451) M. W. SMITH, having been duly sworn, testified as follows:

Direct examination.

By Mr. Rogge:

Q. State your name?

A. M. W. Smith.

Q. Where do you live?

A. Greenville, Pitt County, N. C.

Q. How long have you lived there?

A. All my life.

Q. Hold any county office?

A. Member of the board of commissioners.

Q. From when to when?

A. From December, 1946 up to the present.

Q. Do you recall about the 1947 jury scroll?

A. I recall helping.

(p. 452) Q. Which are your townships?

A. Winterville and Chicod.

Q. Chicod is divided into four election precincts?

A. Four now. Three formerly and the fourth was added.

Q. You recall that Chicod has four voting precincts which make up Chicod Township and added to that you have Winterville Township?



A. That's right.

Q. Do you remember who represented Beaverdam, Faulkland and Fountain?

A. Mr. G. H. Pittman.

(p. 453) Q. On Chicod and Winterville tell what you did with reference to getting a list of names?

A. The names were handed to me and I scrutinized that list and of that list I selected those whom I thought were competent, those I knew to be competent. Of course I got some help.

Q. Who helped you?

A. L. C. Venters, Curtis Spencer, Heber Boone, Grover [fol. 66] Smith, Enosh Braxton, and Mr. Heber Porter might have but I am not sure.

Q. Are those people all white?

A. Yes, sir.

Q. You didn't confer with any negro members of the community?

A. I didn't at that time.

Q. You are familiar with the fact that the tax book is kept in white and negro sections?

A. Yes, sir.

Q. Turn to Chicod Township and turn to the list of negro taxpayers and read off to us the ones you think are qualified for jury duty?

A. At that time Manning Barnhill, Edward A. Chapman. There are two Sam Chapman and one I think is qualified, the older man. I think Paul Gatlin was qualified in 1947. Along then I used to see him. Haven't seen him in a number of years. I don't know whether he is still in that precinct or not. Otis Hawkins, Coon Moore, James Gray.

Q. You have given a list of seven people. I ask you if since (p. 454) from E. A. Chapman, who is on the registration list for Chicod Township No. 3, you can find any of these names in the jury scroll book?

A. This is not in here by townships.

Q. It is alphabetically by election precincts. You will find Chicod 1, 2, 3 and 4.

A. Edward A. Chapman.

Q. I said aside from E. A. Chapman who is on the voting registration list?

A. No, I don't find any.

Q. Aside from E. A. Chapman you don't find a single one of those names on there?

A. I don't find it.

Q. Well, I don't either. Isn't this due to the fact that the list you had before you was the list made up from the voting registration books and not tax book?

A. I am not prepared to say.

(p. 455) Q. For each township you had one alphabetical list?

A. I think so. Right opposite the name was given the township and number. Three or four precincts I had and it would number the township.

Q. You won't find 1, 2, 3, and 4 in the tax book?

A. I don't think so.

Q. You want to look?

A. I don't remember it being on there.

Q. In the tax book it is just "Chicod Township"?

A. That's right. Chicod Township, 1, 2, 3 and 4, that's the way it was on the list furnished to me.

Q. Suppose you look at Chicod in the tax book and see if it is divided into Chicod 1, 2, 3 and 4?

A. I don't recall that it was.

Q. Just Chicod Township?

A. Yes, sir.

Q. However, in the voting registration list it is "Chicod 1, 2, 3 and 4"?

A. That's right.

Q. Doesn't that satisfy you that what you had was a list made up from the voting registration and not from the tax book?

A. It does not.

[fol. 67] (p. 457) Q. You gave us seven names, Manning Barnhill, Edward A. Chapman, Sam Chapman, Paul Gatlin, Otis Hawkins, Coon Moore, James Gray as the ones you regarded as qualified?

A. I don't remember his name being on it. I just used the names on the list they gave me.

Q. This list you gave were names you regarded as qualified?

A. Yes, sir.

Q. If you had seen the name Manning Barnhill on the list you had would you have stricken it?

A. I don't think I would have.

Q. Sam Chapman?

A. No.

Q. Paul Gatlin?

A. Probably let it stay.

(p. 458) Q. Otis Hawkins?

A. I don't think I would have.

Q. Mr. Coon Moore?

A. I wouldn't say about him. I didn't know him very well at that time.

Q. Would you have stricken it?

A. I wouldn't say.

Q. What about James Gray?

A. I probably would not have taken his off.

Q. Did I ask you whether in making your check you consulted with any negroes in these communities?

A. No, I didn't.

Q. How many did you know in your townships who were on the list?

A. Colored people, negroes?

Q. Yes.

A. I don't know. I couldn't say.

Q. Let's take one more look. Would you go through Winterville Township and call off the names which you think in 1947 were qualified for jury duty?

A. I don't know but very few negroes in Winterville, very few.

Q. Did you check with anyone?

A. Yes, Mr. Enoch Braxton. He lived in Winterville and worked for the county and knew a lot of people.

Q. The tax list had three hundred and forty two negroes. Do (p. 459) you think you went over that many names?

A. I don't know. I went over the list I got with him for Winterville.

Q. Let's look at the list of those. Know S. T. Barrett?

A. No, sir.

Q. P. R. Cannady?

A. No, sir.

Q. O. D. Gardner.

A. No, sir.

Q. W. R. Roberson?

A. No, sir.

Q. You know none of those on the jury scroll from Winterville?

A. Yes, sir, asked him about all. Some of the whites I knew. I don't remember how many of the colored people I knew but I don't know many colored people around Winterville.

(p. 464) M. D. Hodges, recalled:

Re-direct examination.

By Mr. Rogge:

Q. You were telling us that you yourself had done the work on the 1943 list?

A. Yes, sir. I might have got some information in the office but I went over the books.

Q. Did I understand you to say you did the work?

A. Still I might have got some information in the courthouse. I am sure I did not having been on there long.

Q. What help did you have on that?

A. I don't remember. I probably solicited the Clerk of the Court and Register of Deeds and people in the Auditor's office.

Q. And your fellow county commissioners?

[fol. 68] A. Not when I was going over it.

Q. Is my estimate wrong? There are about eight hundred or a thousand names?

A. I didn't count the pages.

Q. On the tax list add white and negro together you find approximately fourteen thousand and a few hundred names. Will you tell me how you made the selections?

A. According to the ones I thought were qualified.



Q. And you went to the section of the tax list for white taxpayers first?

A. I don't remember about that.

(p. 465) Q. Do you find the names of any negroes on here?

A. There is probably right many on here. I recognize two or three. There are a lot of people, whites and niggers both have the same name.

Q. Have you any doubt if they have the same name you picked the one from the white list?

A. I don't remember now.

Q. What?

A. I don't remember.

Q. Find the names of all the negroes in this list?

A. I can't say I can do that.

Q. You said you found two or three?

A. I said I found all I recognized.

Q. This is what I thought you were going to be doing while you had this?

A. I did but I still can't identify them.

Q. You went through the list?

A. Yes, but some I couldn't tell the initials.

Q. I want those you can tell me you put on there as being members of the negro race?

A. Tommie Croom, James Anderson, Walter Green.

Q. Are there any duplicates? You know James Anderson who is white?

A. No.

Q. Who is the third one?

(p. 466) A. Walter Green. Walter Green and Croom are both dead now.

Q. That doesn't make any difference.

A. You might want to know why they are not on another year.

Q. Are there any others?

A. There is a lot in here I don't know whether white or negroes.

Q. I want to know all you put on the list because you knew they were negroes?

A. I can't remember everybody.

Q. I am asking you only those you can pick out?

A. Arthur Lee. I am of the opinion he is a negro. So far as identifying all of them I can't. I don't know whether they are Indians or Chinese.

Q. I am asking you the names of all those in there known to you to be negroes in the jury scroll which you say you helped get up yourself?

A. Yes, sir.

Q. And you have given us four names?

A. That's right.

Q. What about 1941? You were there also?

A. I haven't got much recollection about 1941.

Q. I call your attention to one thing on there. Let's start at the beginning. Ayden Township, White, 1941. Explain that for us.

(p. 467) A. I couldn't remember that. I hadn't been on the board long and I just don't remember. I have no recollection of it. I am sure I did then just like I did the rest of the time.

Q. You know how that notation got in there?

A. What notation?

Q. On the front page, "Ayden Township, White, 1941"?

A. A lot of people handled those books this week. I don't know who put it in there.

Q. The person who brought the book, it was in there when [fol. 69] he brought it.

A. You are asking me my opinion.

Q. See if you can find anyone in there in the 1941 list which begins "Ayden Township White", tell us whether you can find any in that list that you know to be negroes?

A. M. C. Dixon, Simon Dixon, Emanuel Chapman.

Q. Is that E. A. Chapman?

A. It is just Emanuel Chapman.

Q. You know Emanuel Chapman?

A. I don't know him.

Q. *Shey* did you list him?

A. I just told you I didn't recollect who was in there.

Q. The only thing we want is the names in the 1941 list that you know to be negroes?

A. M. C. Dixon and Simon Dixon, M. C. has had a stroke and Simon is dead.

(p. 468) Q. What about 1945? How much help did you get on that?

A. I don't remember.

Q. I am going to call your attention to another thing. Going back to 1947 do you notice this thing is divided into election precincts, Chicod (1), Chicod (2), Chicod (3), Chicod (4). If you look through you find Greenville (1), (2), (3), (4).

A. If you start to counting that you start to counting back from four to one.

Q. I will ask you a question that I think will be a little more difficult to answer than that one. You also see Grifton?

A. Yes.

Q. Can you find me Grifton in the tax register?

A. Yes, sir.

Q. Grifton township in this book?

A. No, you can't find one in this book?

Q. You find them listed as Grifton?

A. That was for identification.

Q. I am going to ask you if that doesn't indicate the 1947 list was made from the voting registration and not from the tax ledger?

A. I can't answer that. They might have listed that here and took part of the names off of the tax list and part off of that, I won't present when they assembled them.

Q. Is it a fact that prior to 1947 you took names nearly all from the white tax list and in 1947 what you had before you was a list of names from the voting registration list?

(p. 469) A. I don't know where it came from.

Q. What is your best answer?

A. My best answer is we told them where to get the names and a commissioner can't stay with folks twenty-four hours a day to see if they do it or not. We have to rely on their best judgment.

Q. And that is your answer to the question?

A. Yes, sir. When we gave the attorney and register of deeds instructions where to get the list that is all we could do. They had them ready for us.

The Court: You passed on the list handed to you?

A. That's right. After deleting a lot of names.

The Court: You took off some and added none?

A. I did add two or three. That was brought out this morning.

Mr. Rogge: That is all.

(p. 471) Re-direct examination of M. D. Hodges.

By Mr. Rogge:

Q. Can you give us the name of a single person in the jury scroll book for 1947 that didn't come from the voting registration list aside from the two names you gave us this morning. Dixon and Duggins?

A. I gave you those names.

[fol. 70] Q. Can you give us a single additional name?

A. If you see the name John Jones you don't know whether it came from the tax book or registration.

Q. I can tell you whether it came from the tax book. Can you give me a single additional name that didn't come from that voting registration book?

A. No, sir.

The Court: Mr. Hodges is excused.

(p. 472) J. D. JOYNER is recalled for further examination:

Re-direct examination.

By Mr. Rogge:

Q. Mr. Joyner, since you were here we have gotten some additional light on the list. Did you hear the testimony of Mrs. Wheelless and her associates?

A. No, sir.

Q. Did they get up a separate additional list or their own from the tax list?

A. I didn't hear them say that.

Q. I ask you whether it is a fact?

A. You want me to state whether they made a separate list from the tax book?

Q. For 1947..

A. In preparation of the jury list?



Q. That's right. . .

A. Originally started with the registration books.

Q. And Mrs. Goodwin brought you a list made up from that?

A. And then the tax book was gotten from the tax officer and the list the young ladies in the office made was a list which they checked the names on the tax book against the names on the registration books for the purpose of getting names that were not on the registration books, in order to integrate a complete list of the two.

Q. So that I can get your best recollection, their testimony was pretty positive that they got up an additional list of their (p. 473) own on which they spent a long period of time. Isn't it a fact you handed up two different lists?

A. I don't remember seeing them.

Q. Your recollection is what?

A. That we compiled one list from the two sources.

Q. Look at this 1947 list. Go through that. I want you to observe as you go on Chicod 1, 2, 3, and 4, and then look on and see whether you don't find Greenville 1, 2, 3, and 4, and then go on and see if you don't find Grifton Precinct?

A. Excuse me a minute but so many names I can't find them all at once.

Q. Chicod 1, 2, 3, and 4, Greenville 1, 2, 3 and 4, and Grifton. See if you don't find all of them in there?

A. I have Farmville Township, and you will note if you will—

Q. If you will follow my questions. Can you find Chicod 1, 2, 3 and 4?

A. I do.

Q. And Greenville 1, 2, 3 and 4?

A. I haven't gotten there yet. Yes, I find Greenville 1, 2, 3 and 4.

Q. Now find Grifton for me?

A. I find Grifton.

Q. Grifton is not a township?

A. Not unless it has been changed recently.

(p. 474) Q. You won't find Grifton?

A. Not as a township.

Q. Grifton election precinct is divided into two townships, [fol. 71] Ayden and Swift Creek?

A. To the best of my knowledge.

Q. Part in one and part in another?

A. Yes, sir.

Q. If you had a list based on the tax list you wouldn't have it divided into these precincts?

A. If based on that alone.

Q. Aside from three names, Duggin and Dixon, which are at the end of Grifton, have been added out of alphabetical order?

A. Yes, sir.

Q. And the name of Wimberly, which you find at the end of Belvoir, I want you to point to a single additional name out of more than five thousand names of negroes listed in the tax list for 1946 that have been added to the list which you hold in your lap?

A. I am going to ask you to restate that question.

Q. You got a list from Mrs. Goodwin based on the voting registration?

A. That's correct.

Q. And you say names were added to that?

A. Yes, I said that.

(p. 475) Q. Aside from the names Dixon and Duggin, which Mr. Hodges says he added at the end of the list, and Wimberly at the end of Belvoir, point to a single additional name in the more than five thousand in the negro portion of the 1946 tax list that you will not find in the voting registration books?

A. I don't know that I could tell the difference between negro and white. I can find them on that book there because they are distinguished.

Q. Can you turn to this book which contains the names of more than five thousand negro taxpayers and find me the name, aside from those three, the name,—and you can tell whether they are negroes in this book,—find me the name of a single additional person that was added to that list which is not in the voting registration?

The Court: Won't he have to check it?

Mr. Rogge: That is what we have done and we want him to.

The Court: You have it in evidence and unless that is attacked. I am not telling you what to put in and I don't

want the saying of time to be the paramount consideration but I know it would take him a good while to do that because it took Mr. Gordon and several assistants a good many hours. I am going to accept those figures unless something is shown to the contrary.

Q. Isn't it a fact you didn't use the tax list at all?

A. No. I can prove that. For example in Farwayville section (p. 476) of the jury scroll there are two divisions. It starts off "J. I. Abernathy" and goes down a ways and comes here and starts with "Abrams". Two divisions. It is apparent to me that the first list taken off of the registration book and this second list the names on the tax book that were not on the registration books:

Q. Negro names?

A. I don't know whether negro or white.

Q. I am asking you for the negro names.

A. I am not prepared to say what are negro names and what are white names.

Q. You went to the voting registration where they are checked white or negro?

A. I don't know. It was brought out the other day that they were.

Q. Take a look at them?

A. Yes, they have white and colored with a check.

Q. Your tax list you know is divided into white and negro?

A. That's correct.

Q. So by using these two against the jury scroll book you will have no difficulty in picking out names that you know to be negro?

A. They could be checked.

[fol. 72] Q. I ask you whether aside from these three names you can find me any?

(p. 477) A. I can't say because I haven't checked them for that purpose. If there I don't know whether they are or not. I haven't had occasion to check the list for that purpose.

Q. Isn't it a fact that the list Mrs. Wheelless and her associates made got lost somewhere in the shuffle?

A. Absolutely not.

Q. How do you account for only three additional names, and Mr. Hodges accounts for two and that leaves us one?

A. I have no way of telling. I had nothing to do with that.

Q. They say you made up a list. Did you hear the testimony of Mr. Perkins this morning who went through the tax list and gave us the name- of twenty seven additional people he thought were identified aside from four which were registered voters and not a single one appeared on the jury scroll?

A. If he said it I heard it.

Q. How do you account for that?

A. I didn't lose the tax list.

Q. What happened to it?

A. This is the list.

Q. That is not that list unless you can find me some names. That list of names, and you check it yourself, that list of names is your voting registration list and aside from the three names I have called to your attention, two of whom, Duggin and Dixon, Mr. Hodges says he added to the list, you will not find aside from Wimberly, additional names from more than (p. 478) five thousand that appear in the tax list?

A. I can explain it. My job was to prepare the list for the commissioners. It was not for me to judge whether they should remain on that list or not.

Q. The inference I draw from it, and you can make any explanation you want, is that what you turned over to the commissioners was what Mrs. Goodwin prepared for you—

Objection by Respondent to the inference.

and not the tax list?

A. I understand you are saying what I did was take the list Mrs. Goodwin made from the registration book and that alone and that list alone is what I turned over to the commissioners. You are absolutely incorrect in that inference.

Q. I would like for you to explain.

A. I can show names on here but I can't say whether they are negroes or whites. There is no distinguishing marks on the record.

Q. There is distinguishing mark on the registration?

A. Yes, sir.

Q. And in the tax list?

A. Yes, sir.



Q. So that in the two sources there are distinctions?

A. Yes, sir.

Q. You can't give me any better explanation than the one already given why there are not more than the three additions?

(p. 479) A. I don't know why the names are not there. I made up the list from both books and it was turned over to the county commissioners as such.

Q. That is the best you can say as to why none of the five thousand names, aside from the three I mentioned, are on there?

A. There is no way I could say why.

That is all.

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(p. 484) Sheriff Tyson recalled:

Recross-examination:

Q. You never saw a negro on the grand jury in Pitt County?

[fol. 73] A. I don't recall that I have.

• • • • •

(p. 493) Mr. Moody: We have both freely referred to the transcript, the answer refers to the record proper Pitt County, the transcript and various motions, petition and application for certiorari. They were filed with the answers. This was stipulated to. Do we understand, or would Your Honor make any ruling that the whole previous record is in?

The Court: I understand it is already in.

Mr. Rogge: I will agree this is the record made in that case and the people were called and so testified and I am perfectly happy to stipulate if the persons called were called would give the same answers. I don't want to be bound by saying it was offered.

The respondent offers in evidence the four volumes of testimony elicited in the Superior Court of Pitt County, including the verdict and findings of the Court and other materials contained therein, being the same four volumes

which are the subject of the stipulation which appears of record in this case.

### Close of Evidence

At the close of all the evidence the respondent renews objection to all the evidence received during the course of the hearing and moves to strike all of it from the record. The objection is overruled and the motion is denied.

(p. 494) The respondent renews his motion to dismiss. The motion is overruled and denied.

# United States Court of Appeals

For the Fourth Circuit

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**No 6330**

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**LLOYD RAY DANIELS and BENNIE DANIELS,**  
**Petitioners-Appellants**

**against**

**JOSEPH S. CRAWFORD, Warden, Central Prison**  
**of the State of North Carolina, Raleigh, N. C.,**  
**Respondent-Appellee**

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## **APPENDIX TO RESPONDENT-APPELLEE'S BRIEF**

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W. W. SPEIGHT (Federal Transcript) TESTIFIED AS  
FOLLOWS:

### **DIRECT EXAMINATION**

Q. State your name and business?

A. W. W. Speight, an attorney of Greenville.

Q. How long?

A. I started in 1939, interrupted by the war years and resumed in 1946 and until now.

Q. Received your education where?

A. LLB University of North Carolina. Undergraduate work at the University.

Q. Serve any state office?

A. Institute of Government doing criminal law research, and Attorney General law office.

Q. What do you do now?

A. Practice law in Greenville, James and Speight.

Q. The record in the State Court shows you and another attorney were appointed at the March Term, 1949

versely to petitioners in the State Courts, and being dissatisfied with these decisions, the petitioners are simply asking the Federal Court to use the writ of *habeas corpus* as a substitute for an appeal and thereby retry the issues again. In other words, the Federal Court, according to petitioners' concepts, would be a super court of appeals. We think we have clearly shown that this is not the proper use of *habeas corpus*. The petitioners had open to them a review of all of these questions by the Supreme Court of North Carolina. The same method was open to petitioners for their review as is open to all of the people of the State who may be convicted in criminal courts of the State. The petitioners did not avail themselves of their rights as to this review, and, as we see it, they cannot now complain and assert that they are entitled to retry the case in the Federal Courts, especially since the Supreme Court of the United States, having before it a record of all the proceedings and knowing the seriousness of the situation, saw fit to deny petitioners' application for a writ of *certiorari* in that Court.

Respectfully submitted,

HARRY McMULLAN,  
Attorney General  
of North Carolina.

RALPH MOODY,  
Assistant Attorney General  
of North Carolina.

R. BROOKES PETERS, JR.,  
General Counsel of State  
Highway & Public Works  
Commission.

E. O. BROGDEN, JR.,  
Attorney for State Highway  
and Public Works  
Commission.

Attorneys for Appellee



Superior Court of Pitt County to defend the petitioners, Lloyd Ray Daniels and Bennie Daniels?

A. That's correct. I was appointed to defend Lloyd Ray Daniels and Mr. A. B. Corey was appointed to defend Bennie Daniels.

Q. Do you remember when they were arraigned?

A. Yes, sir.

Q. Had you been appointed when they were arraigned?

A. Yes, sir.

Q. And entered pleas to the bill of indictment?

A. Yes, sir.

Q. The record shows you didn't move to quash.

OBJECTION BY PETITIONERS. OBJECTION OVER-  
RULED.

MR. ROGGE: Why previous counsel may or may not have done anything, why a lawyer didn't do something which I think under the circumstances should have been done—

A. I didn't move to quash because I knew the grand jury, most of the members personally, knew the foreman, and considered they would give fair consideration to the evidence.

Q. What county were you born and reared in?

A. Born in Pitt County, moved away and spent most of my life in Nash County.

Q. Did you know the trial panel?

A. Yes, sir.

Q. Reasonably familiar with them?

A. Yes, sir.

Q. For what reason did you not challenge the array of trial panel?

A. For the same reason.

Q. You knew Mr. Corey?

A. Yes, sir. He had been appointed to defend Bennie Daniels.

Q. Where was he born and raised?

OBJECTION BY PETITIONERS TO EACH AND EVERY QUESTION ALONG THIS LINE AND EACH AND EVERY OBJECTION IS OVERRULED.

A. He was born and raised and lived all his life in Pitt County with the exception of the first World War.

Q. He is dead now?

A. Yes, sir.

Q. What office had he held in the General Assembly?

A. He had served in the Senate a number of years.

Q. Can you give us some information about his acquaintance with the people of Pitt County?

A. It was very wide.

Q. Had he to your knowledge campaigned over the county?

A. Several times.

Q. Do you have an opinion as to his competency as an attorney?

A. I would say very good. He was a good trial lawyer.

Q. Wasn't he very well acquainted by knowing people by name in Pitt County?

A. He was.

DR. IRA C. LONG (Federal Transcript) TESTIFIED AS FOLLOWS:

#### DIRECT EXAMINATION

Q. Do you hold any position with the State of North Carolina?

A. Yes, Superintendent of the State Hospital at Goldsboro.

Q. What type of institution?

A. For the insane.

Q. Maintained exclusively for Negroes?

A. Yes, sir.

Q. How long have you held that position?

A. A little over four years.

Q. You were holding that position in February, 1949?

A. Yes.

Q. Did you ever have occasion to examine Lloyd Ray Daniels and Bennie Daniels?

A. Yes.

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Q. How did these petitioners happen to be in your custody?

A. They were sent in from Pitt County for thirty days study.

Q. You know by what authority?

A. The Judge. They usually send them in.

Q. You know who the Judge was?

A. I think it is in the record.

THE COURT: Do you know?

MR. TAYLOR: Judge Parker.

Q. You are in charge of the institution?

A. Yes, sir.

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#### QUESTIONS BY MR. MOODY:

Q. Did you write this letter to the Clerk of the Superior Court?

A. Yes, I did.

Q. And it was your conclusion that they were both mentally competent to be put upon trial and that they knew right from wrong?

A. Yes, sir.

Q. And it is your conclusion from your examination that if anyone can think they could tell whether they had killed a man or not. They got that much mentality?

A. Oh, yes.

Q. And they could relate a narrative of what happened if they wished to do it?

A. Yes, sir.

Q. You saw no defect in their recollection?

A. No, sir, except for their judgment.

Q. They wouldn't have as good judgment?

A. No, sir.

Q. They wouldn't have as good judgment as some higher educated person?

A. No, sir.

SHERIFF RUEL W. TYSON (Federal Transcript) TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

Q. You are Ruel W. Tyson, Sheriff of Pitt County?

A. Yes, sir.

Q. Do you remember the arrest of these two petitioners?

A. Yes, sir.

Q. Were you present when Lloyd Ray was arrested?

A. Yes, sir, I was.

Q. He was the first one arrested?

A. Yes, sir.

Q. When and where was Lloyd Ray arrested?

A. Lloyd Ray was arrested on Sunday night between one and one-thirty on the L. C. Whitehurst farm in the Stokes Section of Pitt County.

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Q. Did you go to the house yourself where he was found?

A. Yes, sir, I did.

Q. In company with whom?

A. In company with Deputy Sheriff Manning, Deputy Sheriff Mills, Al. Dorsey, M. M. Corbett, police officer, and S. G. Gibbs, who was patrolman at that time.

Q. All of you go to the house at the time?

A. Yes, sir.

Q. Where did you find Lloyd Ray Daniels?

A. In this house, tenant house.

Q. Where in the house?

A. He was lying on a bed or couch one, I don't know which.

Q. Dressed or undressed?

A. He was fully dressed.

Q. What time was that?

A. Between one and one-thirty.



Q. Was he taken in custody at that time?

A. Yes, he was.

\*\*\*\*\*

BY THE COURT:

Q. Remember what was said in the house?

A. I told him he was under arrest. He wanted to know what for. I told him for the murder of Benjamin O'Neal.

Q. State what was said on the way to the car about any statement he might make?

A. I don't think anything said about any statement until after we got in the car.

Q. What was said then, if anything?

A. After he was put ~~in~~ the car with Mr. Manning, Mr. Gibbs and myself. Lloyd Ray on the back seat and Mr. Gibbs on the back seat. I was on the front seat, right hand side. Mr. Manning was driving. On the way to Williamston we talked to him some. I did some of the questioning and Mr. Gibbs did some. I don't think Mr. Manning did. We hadn't got very far from where he was arrested before he began to tell us about the crime and how it was committed and all about it.

Q. Did anybody offer him any violence?

A. No, sir.

Q. Anybody attempt to?

A. No, sir.

Q. Anybody make any threats?

A. No, sir.

Q. Anybody offer him any inducements?

A. No, sir.

Q. State whether or not he was warned or anything said to him with respect to what he said would be used against him?

A. Yes, sir, I warned him and told him he didn't have to make a statement, that any statement he did make would be used against him in court.

Q. When was that?

A. After he got in the car.

Q. Was that before he made any statement?

A. Yes, sir.

(DIRECT EXAMINATION RESUMED)

Q. You say it was shortly after you pulled off in the car?

A. Yes, sir, after we got him in the car. I think that's correct.

Q. How long after that before he told you about it?

A. I couldn't say exactly how long. I say not but a very few minutes.

Q. State what he told you?

A. I don't know as I could state it word for word unless I could refer to the statement.

THE COURT: Tell us the best you can.

A. Lloyd Ray said he and Bennie were in Greenville together, had drank some whiskey, had been on Bonner Lane and gotten in a fight with some men and that he had cut this man and he had some blood on his clothes.

Q. Which one?

A. Lloyd Ray, and that they left down there and come to the bus station. The bus hadn't come. They decided to get a taxi. They got a taxi to take them home. Left Greenville, went out 264 towards Washington, turned off of the highway up a dirt road. This road leads North from the highway. Went down the dirt road some little distance, turned back to the right and down this road. He said Bennie told the taxi driver to turn up in the barn yard, that they couldn't turn beyond the barnyard for the road was bad. They turned up into the barnyard and Bennie held a knife around O'Neal's neck.

Q. They didn't call his name, did they?

A. I believe they called him taxi driver. I am not positive. And he took his money out of his pocket.

Q. Did he say where each were sitting, front or back?

A. I believe he said he was sitting side of O'Neal and Bennie in the back, behind. I believe that is correct.

And they got out of the car. Said O'Neal had a knife. They got in a fight and tussel, fought some on the ground and got in the tobacco barn and had quite a scuffle there and come out of the barn and had quite a scuffle. That they knew when they left him he was dead.

- Q. Did he say why they assaulted him?  
 A. He said they assaulted him to get what money he had.  
 Q. Was there any reluctance on the part of Lloyd Ray to make that statement?  
 A. No, sir. After he started talking he talked as freely as anyone I ever talked to.

\*\*\*\*\*

- Q. Were you present when Bennie was arrested?  
 A. Yes, sir.  
 Q. Where was that?  
 A. Bennie was arrested approximately a mile or two East of Winterville on Bryant Tripp's farm at the home of Moore around five o'clock in the morning, Tuesday morning. I went in the house and when I got in the house there was a man in the first room that I entered. I went in the room to the right and Bennie was standing behind the door fully dressed with his hat on.  
 Q. What did you do with him?  
 A. Put him under arrest. Told him he was arrested for the murder of Benjamin O'Neal. We took Bennie to Greenville, changed cars and took him to Williamston, Mr. Ray Smith, Gibbs and Dorsey. Mr. Ray Smith was a fireman. He was driving my car for me.  
 Q. Did Bennie make any statement en route to Williamston?  
 A. Yes, sir, he did.  
 Q. Who was in the car that he rode to Williamston in?  
 A. Gibbs, Dorsey, Smith and I.  
 Q. State whether any threat or attempted violence was used on him?  
 A. No, sir. There was no threats or violence of any kind.

- Q. Any inducement?
- A. No, sir.
- Q. Hope of reward?
- A. No, sir.
- Q. Was he told it would be easy on him?
- A. No, sir.
- Q. What was he told?
- A. I warned him he didn't have to make a statement unless he wanted to and whatever statement he did make would be used against him in court.
- Q. Was this said while traveling on the way to Williamston?
- A. Yes, sir. When we arrested him I took him by not very far from where his father lived, took him by his father's home. Someone came to the door, I don't know whether his brother or father, and I told him we had Bennie under arrest.
- Q. Did Lloyd Ray's people know he was arrested?
- A. I don't know. I hadn't seen his people.
- Q. What did Bennie say on the way to Williamston?
- A. This might not be the exact words but he told us that he and Lloyd Ray had gotten a taxi in Greenville.
- Q. He tell you anything about what had happened before they got the taxi?
- A. Told us he had been to Bonner Lane and gotten in a fight there and come over there to the bus station and got a taxi to take them home. After they went out 264 several miles they went up this dirt road, then turned up the road, then drove up in the barnyard and that he threw a knife on O'Neal and Lloyd Ray put his belt around O'Neal's hands, that they got out of the car. Bennie said he pulled O'Neal out of the car and Lloyd Ray got out of the car under the steering wheel and they had quite a tussel on the ground and into the tobacco barn. I asked him if he cut O'Neal. He said he didn't know, that they were in the tobacco barn in the dark and he didn't know whether he cut him or not. But he said he hit him one time with a brick and



one time with a railing that came off of a tobacco truck and also hit him with some tobacco sticks.

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Q. Getting up to the night the written statements were made. The jail in Williamston is upstairs?

A. Yes, sir.

Q. Did you go up there with them to bring Bennie down?

A. No, sir, I didn't.

Q. One of them said you signed one of their names?

A. No, sir, I didn't.

THE COURT: I believe Lloyd Ray said the Sheriff made his mark. Didn't he say yesterday he made the mark himself?

Q. Did you write either one of their names or make either one's mark?

A. No, sir.

Q. The statement made in Williamston in the courthouse, were they together then?

A. Lloyd Ray was brought down from jail first and later Bennie was brought down. It was in Sheriff Roebuck's office in Williamston. Two rooms to the office. Partition door between the two rooms and this door was open between the two rooms.

Q. Why was the statement made there again?

A. To get it in writing.

Q. At that time was any inducement offered either or one of them to make a statement?

A. None whatsoever.

Q. Any threat or attempted violence?

A. There was not.

Q. Or hope of reward?

A. No, sir. Both talked just as freely all the way through about it.

Q. Did anybody slap anybody?

A. No, sir. Nobody did any cursing.

Q. Who took down their statements?

A. Mr. Arnold.

Q. He is clerk to the city police, or was at that time?

A. Yes, sir, file clerk I believe.

Q. What was done then with respect to the statements?

A. Mr. Arnold typed them.

Q. Then what happened?

A. The statement was read to Lloyd Ray. Bennie was in the room when it was read. Lloyd Ray said he couldn't write. I believe Mr. Page wrote his name and Lloyd Ray touched the pen and made his mark. Bennie's was read to him. They were both asked if that was what happened. Both said it was. Then I asked them both if anybody had offered them any reward or promised them anything, or threatened them, or even cursed them. Both stated they had not been mistreated in any way, that the officers had been very nice to them all the way through.

Q. Did they remain there that night?

A. After this was done they were taken on a car by Deputy Sheriff Manning and Gibbs and taken to Raleigh.

Q. Did you go?

A. No, sir.

Q. At any subsequent time did you talk to either or both?

A. Before the September term of court Dorsey, Manning and I went to Raleigh, got Lloyd Ray and Bennie, and brought them to Wilson. On the way to Wilson I took the clothes they had in possession, had on the night it occurred, stopped on the side of the highway, took the clothes out. Each one pointed out which ones he had on, shirt, pants, etc., and both very freely admitted the crime that had been committed. Told us what had happened. Both cried about it. Said they were mighty sorry they were in it, that they would never have done it if they hadn't been drinking. Talked very freely about it.

Q. Make any statement at any other time in your presence?

A. I believe that is the last time I talked to them.

THE COURT: You brought them from Raleigh to Wilson?

A. Yes, sir.

Q. On this trip down from Raleigh was that when you were bringing them to court?

A. Yes, sir.

Q. To be arraigned?

A. Yes, sir.

Q. State whether or not any threat or violence or offer of violence or inducement was offered?

A. There was not.

Q. Were any questions asked or were these statements made voluntarily?

A. They were made freely and voluntarily. They talked about it very freely.

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Q. State whether they ever said anything to you about an attorney or to see one?

A. No, sir, never did.

G. M. JOHNSON (Federal Transcript) TESTIFIED AS FOLLOWS:

#### DIRECT EXAMINATION

Q. What is your name?

A. G. M. Johnson.

Q. Where do you live?

A. Goldsboro.

Q. By whom are you employed?

A. The State of North Carolina.

Q. In what capacity?

A. Society worker State Hospital at Goldsboro.

Q. Were you so employed in May, 1949?

A. Yes, sir.

Q. As such did you see Lloyd Ray Daniels and Bennie Daniels while they were at that institution?

A. I did.

Q. Did Lloyd Ray make a statement with respect to this alleged killing in your presence?

A. He did.

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Q. Explain the circumstances under which Lloyd Ray came to make a statement to you?

A. He just came to the office, a person brings him to the office and I talk with him and get very little information. I don't try to push them because it is immaterial. If they voluntarily give it. I remember one day they said there was a man there from Greenville on whose place Lloyd Ray was raised and practically raised by this man who would like to see me. I am sorry I have forgotten his name. He said he would like to talk to Lloyd Ray. After talking to him he came back and said he would also like for me to talk to Lloyd Ray and perhaps he would tell me what he told this individual. Both of us went to the criminal building and while sitting on a cot he divulged the information I wrote down.

Q. Did he give information in response to questions by you?

A. The door was closed and this individual said, "Lloyd Ray, you tell Mr. Johnson what you told me." Without any further question he went through with it and after it was all over this individual said, "That is what he told me."

Q. Did you reduce that to writing?

A. I did.

Q. State whether that is a copy or report of that conversation or statement to you? (Shows the witness a paper)

A. It is.

Q. Did you make that yourself?

A. I did.

Q. You say "The patient calmly related the following—" and from there on is that what he said in your presence, Lloyd Ray?

A. Yes, sir.



The statement of Lloyd Ray Daniels, identified by G. M. Johnson, is introduced in evidence by respondent and is marked "R-2".

ROY PEEL (Federal Transcirtpt) TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

Q. You are Mr. Roy Peel?

A. Yes, sir.

Q. Where do you live?

A. Williamston, Martin County.

Q. What do you do there?

A. Jailor and deputy sheriff.

Q. How long have you held that position?

A. Since 1933.

Q. You served under Sheriff Roebuck?

A. Yes, sir.

Q. Where is he?

A. Dead.

Q. You remember the occasion when officers of Pitt County brought Lloyd Ray Daniels and Bennie Daniels to your jail?

A. I do.

Q. Were you present on Tuesday or Tuesday night that they came down there and talked to them?

A. I was present part of the time.

Q. What particular time?

A. I taken them in and out of the jail, down to the adjoining office of the Sheriff. Sheriff and Patrolman's office side by side.

Q. Did you bring them down that night?

A. Yes, sir.

Q. Who else went up there with you?

A. Deputy Sheriff Manning, I think.

Q. Did you and Deputy Sheriff Manning bring them both down?

A. One at the time.

- Q. State when you went up to get them if anything was done,—if he was struck or slapped?

OBJECTION BY PETITIONERS TO LEADING QUESTIONS. OBJECTION OVERRULED.

- A. Came up there and wanted to talk to them. Sheriff Roebuck sent up there after them.  
Q. Anything take place when you went up after them?  
A. No, sir.  
Q. Did you or Manning strike them or threaten them?  
A. No, sir.

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- Q. Did you hear anybody threaten or strike anybody or threaten them or tell them it would be better to tell?  
A. No, sir.  
Q. Hear an officer say anything like that?  
A. No, sir.

L. D. PAGE (Federal Transcript) TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

- Q. You are Mr. L. D. Page?  
A. Yes, sir.  
Q. At this time we are talking about you were policeman in Greenville?  
A. Yes, sir.  
Q. Did you go to Williamston with Sheriff Tyson and Sheriff Manning on the night we are talking about?  
A. Yes, sir.  
Q. Did you go upstairs in the jail?  
A. I did not.  
Q. Did you slap or hit Bennie up there?  
A. No, sir.  
Q. Did you slap or hit either one of them at any time?  
A. I did not.

## OBJECTION BY PETITIONERS TO LEADING QUESTIONS.

Q. State whether you were there when they made the statements in the Sheriff's office?

A. I was.

Q. State whether you or any other person either threatened them, offered any violence or intimidation to make a statement or any hope of reward that it would be better for them to make a statement or anything of the kind?

A. We never offered them any reward or threatened them no way, shape, form or fashion. The statements were free and volunteer, as much so as you and I talking in this room.

Q. State whether they were reluctant or hesitant to make the statements?

A. They were not. They were very open and free with their statements.

Q. State whether they were told by anybody whether they would have to make any statement?

A. They were told they didn't have to make a statement.

Q. By whom?

A. By the Sheriff.

Q. What else did he tell them?

A. That they didn't have to sign the statement after it was made. To explain that statement, there has been a great to-do about the beginning of the statement. I dictated that statement which warned them of their rights there in the beginning of the statement that it would be use against them in court, first paragraph.

Q. Do you know whether or not you dictated the last paragraph?

A. I dictated the last paragraph. The reason for the second page, there was not enough room on the first page to close it and have the signatures. If you will bring me the statement I will explain that clearly. This is Bennie Daniels' statement, "I, Bennie Daniels, of my own free will and without promise of reward or threat of

bodily harm, and after being told this instrument can be used in court against me, make the following statement". By that, it was put in there so he wouldn't make it if he didn't want, to and then he made the following statement. From there on he dictated it until the last paragraph which wouldn't give room for the signatures on this page: "The foregoing statement was made and signed by me this 8th day of February, 1949, in the Sheriff's office in Martin County, before the following officers, whom I know to be officers of law." I was giving him another chance to know he was dealing with officers and it was going to be used against him in court.

THE COURT: That was Tuesday?

A. Yes, sir.

(Answer continued)

Then we asked him would he sign it and he said that he would and he signed it and we witnessed it. That was after I read the full statement back to him.

Q. Who read the statements back to them?

A. I read both of them. They were both present at the time of the reading of each one of the statements.

THE COURT: Did either one of them say anything when you completed the reading of his statement?

A. Said the statement was correct, or words to that effect, that it was like it was, or something to that effect.

Q. Do you remember at the other trial if you were asked to stand up and Bennie was asked if you were the one that slapped him?

A. Yes, sir.

Q. What did he say?

A. He said I was not the one.

THE COURT: Did he identify the one he claimed did slap him?

A. He did not. He couldn't figure out the one in the court room. There was never a harsh word said to those



boys in my presence. Our voices were not raised at all to those boys.

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### RE-DIRECT EXAMINATION

Q. In reading the statements back to them state whether you read the whole thing including the introductory paragraph, which you say you dictated, and the closing paragraph?

A. I did.

Q. State whether you signed either one of their names?

A. I signed Lloyd Ray's name and he made his cross mark. That is all.

RAY SMITH (Federal Transcript) TESTIFIED AS FOLLOWS:

### DIRECT EXAMINATION

Q. In 1947 were you living in Greenville?

A. Yes, sir.

Q. What was your work?

A. Fireman.

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Q. Were you present in the car when Bennie Daniel made a statement with respect to what he did?

A. Yes, sir.

\*\*\*\*\*

Q. Who was in the car with you and Bennie on the way to Williamston?

A. Mr. Gibbs, Mr. Tyson, myself, Captain Dorsey and Bennie.

Q. State whether anyone in the car offered Bennie any violence or put him in any fear or offered him any inducement to make a statement?

A. No, sir, I didn't hear anyone make a statement of any reward or anything toward a statement.

Q. Anybody hit him?

A. No, sir.

Q. Anybody threaten to hit him?

A. No, sir.

Q. Anybody in the car say it would be better for him to make a statement?

A. I don't recall.

Q. How did he come to make a statement?

A. Mr. Tyson asked him did he have anything to do with it. He said yes, but Ola Ray had more to do with it than he did.

Q. Ola Ray?

A. Lloyd Ray, the large one.

Q. Did you have anything further to do with it?

A. No, sir.

Q. State if you recall whether Sheriff Tyson or anyone in the car warned him about whether he should make a statement it would be used against him?

A. No, sir.

Q. You didn't see the other one?

A. No, sir.

S. G. GIBBS (Federal Transcript) TESTIFIED AS FOLLOWS:

#### DIRECT EXAMINATION

Q. You are Mr. S. G. Gibbs?

A. Yes, sir.

Q. Where do you live?

A. Greenville.

Q. When those men were arrested what position did you hold?

A. Patrolman with the State Highway Patrol.

Q. You are now with the State Bureau of Investigation?

A. Yes, sir.

Q. Do you recall the time Lloyd Ray Daniels and Bennie Daniels were arrested?

A. Yes, sir, I do.

Q. Were you present when Lloyd Ray Daniels was arrested?

A. Yes, I was.

Q. Who was with you?

A. Captain Dorsey, of the Greenville Police Department, Sheriff Tyson, Deputy Sheriff Mills and Deputy Sheriff Manning and Mr. Corbett.

Q. You remember where he was arrested?

A. At a tenant house on the L. O. Whitehurst farm near Stokes.

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Q. Were you armed?

A. Yes, sir.

Q. What did you have?

A. 38 Colt revolver.

Q. What was the color or finish?

A. Nickel or chrome.

THE COURT: Appearance of silver?

A. Yes, sir.

Q. Whitish silver?

A. Yes, sir.

\*\*\*\*\*

Q. Did you talk with Lloyd Ray?

A. Yes, started towards Williamston with him.

Q. You recall whether Sheriff Tyson said anything to him?

A. We started questioning him as to where he was on Saturday night. Sheriff Tyson told him when we started questioning him he didn't have to make any statement, that anything he said could be used against him, or words to that effect.

THE COURT: Was that after you got in the car?

A. Yes, sir. He won't questioned en route from the house to the automobile so far as I recall. I won't right close to him. We were all in a group.

Q. It is in evidence in the former trial when the petitioners testified, and at this hearing, that you made certain statements and threats to the petitioner, Lloyd Ray Daniel, had your hand on your pistol and made certain threats to shoot him if he didn't tell what you wanted

him to tell, and it is also in evidence that you told him if he wanted to see his mother again, or he would never see his mother again. Tell the Court what you said along those lines?

- A. No threats were made to Lloyd Ray concerning the statement. Questioned him on where he was Saturday night and we had some other information and asked him why he sent his mother word to burn his clothes before the cops got them.

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Q. You stated you were in an automobile and didn't strike the petitioner, Lloyd Ray Daniels, or make any threats?

A. No, sir.

Q. Did you put your hand on your pistol?

A. No, sir, I didn't. After we started questioning him he said he might as well go ahead and tell us the truth about it. Then he told us that Saturday night around eight-thirty—

Q. Where were you?

A. In Mr. Manning's car on the way to Williamston. He said he got on a taxicab in Greenville and that Bennie Daniels was with him. That they went out on the Washington highway to the Arvon farm, stopped at some tobacco barns. That when they stopped there Bennie threw his knife around the driver's neck and told him to get the driver's money and they went out. That the driver jumped out of the taxi on the driver's side and he, Lloyd Ray went out on the driver's side, and they had a tussel, were hooked up, went in the tobacco barn and came back out and after he fell on the outside they beat him over the head with some tobacco sticks. That was his first statement concerning the crime.

Q. Did you make any notes of what he said?

A. Yes, sir, I did.

Q. Did he sign the notes?

A. I asked him if he would sign it. He said he couldn't



sign his name. I asked him if he would make his cross mark and he did that.

Q. Were those notes produced in the trial at Greenville?

A. Yes, sir. That is one of the exhibits.

THE COURT: Is that in the record?

A. Yes, sir.

Q. Tell what happened about the car?

A. We got out on the hard surface and after we passed through Robersonville the car broke down and we had to call a car from Williamston to come and pull us to the police station at Williamston.

Q. You didn't talk with him any more at Williamston?

A. No, sir.

Q. Were you present when Bennie Daniels was arrested?

A. Yes, sir.

Q. Where was that?

A. On a farm a mile or a mile and a half East of Winterville. A man named Moore whose house we arrested him in.

Q. Did you go in the house when he was arrested?

A. Not in the beginning.

Q. You did later on?

A. Yes, sir.

Q. Was he dressed?

A. He was in the living room at the time I saw him, putting on his shoes or tying his shoes.

Q. Were you present in the car when he was carried to Williamston?

A. Yes, sir.

Q. You talk to him?

A. Sheriff Tyson, I believe, did most of the talking. I don't know whether the Sheriff or I told him we had Lloyd Ray. Sheriff told him he didn't have to make a statement, that anything he said would be used against him.

Q. Anybody strike or slap him or any effort made to intimidate him by force?

A. No, sir.

Q. Anything done to him?

A. No, sir.

Q. Did he tell you his part in the matter?

A. He said he was with Lloyd Ray on Saturday night and they got the taxicab to carry them out the Washington highway and that he was with Lloyd Ray when they killed the taxi driver or robbed the taxi driver. We changed cars and I started driving at the police station. I drove my patrol car.

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Q. Were you present when Sheriff Tyson talked to both of them?

A. Yes, I was.

Q. Bennie said you and others went upstairs in the jail and that you struck him or knocked him down, knocked him sideways?

A. Best I recall I didn't go to the jail at all when we went back the last time.

Q. Did you at any time while you were down there that night, whether upstairs or down, strike him?

A. No.

Q. Did you threaten him in any way or hold out hope to him that he ought to make a statement, that it might be lighter, or coerce him in any way?

A. No, sir.

Q. Was anything done like that by you or anybody present?

A. No, sir.

Q. What was his attitude about talking about it?

A. Lloyd Ray was brought downstairs first and statement taken from him and then Bennie and then we talked to them together after they made statements.

Q. Were the statements read to them?

A. Yes, sir, Mr. Page read the statements to them after they were typed up.

Q. Anything said about signing it?

A. They were told again they didn't have to sign the statements if they didn't want to.

- Q. Who told them that?
- A. Mr. Page and Sheriff Tyson too, I believe, the best I recall.
- Q. Lloyd Ray says when you were down there that night at Williamston that he asked you or told you he wanted to see his mother. State what you know about that?
- A. He never at any time asked to see his mother or people and neither did Bennie.
- Q. Did they ask for an attorney?
- A. No, sir.
- Q. In his statement he said you said if he didn't talk he would never see his mother again. Did you say anything like that?
- A. No, sir.
- Q. Did they make any statement about how they had been treated?
- A. They said we had been very nice to them. They were asked the question if anybody had mistreated them or offered to hurt them and they said we had been very nice to them.

L. E. MANNING (Federal Transcript) TESTIFIED AS FOLLOWS:

#### DIRECT EXAMINATION

- Q. Where do you live?
- A. Greenville.
- Q. What position do you hold?
- A. Deputy Sheriff.
- Q. Did you hold that position at the time of the trial and before the trial at the time of the arrest of Lloyd and Bennie?
- A. Yes, sir.
- Q. Do you remember when the boys were arrested?
- A. I remember when Lloyd Ray was arrested.
- Q. Who was along with you at that time?
- A. Sheriff Tyson, Mr. Gibbs, Captain Dorsey, Mr. Corbett and Deputy Sheriff Mills.

- Q. Will you tell what happened at the time he was arrested?
- A. As has been stated here before, we left the car at Mr. L. C. Whitehurst's house. This tenant house is on Mr. Whitehurst's farm. We walked down a path from where we left the car to this tenant house. Sheriff Tyson, Captain Dorsey and myself went in the house. First knocked the door. They wanted to know who it was. Sheriff Tyson told them. They opened the door and we walked in. There was a couple of other boys on a bed and Lloyd Ray was on a different bed. He was laying with his head covered up, completely covered up. Captain Dorsey took the quilt on the bed and pulled it back, saw him laying there, told him to get up. Asked him his name. He didn't tell us to start with but he later did tell us.
- Q. Was he dressed at the time?
- A. Fully dressed except his hat. Had on his clothes, coat, shoes and all except his hat.
- Q. Did you go to Williamston with other officers?
- A. Yes, sir.

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- Q. Did they make any statement about how any statement he might make would be used?
- A. Yes, sir.
- Q. What statement did they make? What did Sheriff Tyson say?
- A. He told him he didn't have to make any statement, that he could make one if he wanted to or he didn't have to make one. That nobody was going to hurt him if he did or didn't. Lloyd Ray denied it until we told him we had those clothes.

THE COURT: You had the clothes before you went there?

A. Yes, sir.

Q. Have them with you?

A. No, sir.



Q. You heard Lloyd Ray make his statement?

A. Yes, sir.

Q. Did anybody use force to get that statement?

A. No, sir.

Q. Hold out any reward for him if he would make it?

A. No, sir.

Q. Make any threats?

A. No, sir.

Q. Use any inducement?

A. No, sir.

Q. Use any force against him?

A. No, sir.

Q. Tell him he would never see his mother again?

A. No, sir.

Q. Offer him any bodily harm?

A. No, sir.

Q. Put their hands on a pistol?

A. No, sir.

Q. You didn't do any of those things?

A. No, sir.

Q. You were at Williamston, were you not, at the time the statements were made there?

A. Yes, sir, I was.

Q. You went upstairs, didn't you, after the defendants?

A. Yes, sir.

Q. Who was with you?

A. Mr. Peel and myself went upstairs and got Lloyd Ray and brought him down. We talked to him. Then we went back and got Bennie and brought him down.

Q. While upstairs did you linger up there or bring him on down?

A. No, sir, all the staying up there, Mr. Peel unlocked the door, called each one, the one we were after.

Q. Any of you strike either one up there?

A. No talk going on up there between us to the prisoners.

Q. Did Mr. Page go up there?

A. No, sir, no one but me and Mr. Peel.

Q. Did you strike any of the boys up there?

A. No, sir.

Q. Did Mr. Peel strike any of them?

A. No, sir.

Q. Either of you offer any threats to them?

A. No, sir.

Q. Any violence?

A. No, sir.

Q. Any coercion?

A. No, sir.

Q. Hold out any reward?

A. No, sir.

Q. Tell them they would never see their mother again?

A. No, sir.

Q. Any of them tell you that they wanted to see their mother?

A. No, sir.

Q. Ask you to see anyone else?

A. No, sir.

Q. Ask for an attorney?

A. No, sir.

Q. Were you downstairs when the second statement was made?

A. I won't in there all the time at the time the statement was being made. I was in there when the statement was read to them and Bennie signed it and Lloyd Ray made his mark.

THE COURT: Who read it?

A. Mr. Page.

Q. Did anyone ask them if that was their statement?

A. Yes, sir.

Q. What was the answer?

A. Said it was.

Q. Any one make threats to them?

A. No, sir.

Q. Anyone coerce them?

A. No, sir.

Q. Any one use violence against them?

A. No, sir.

CAPTAIN S. B. DORSEY (Federal Transcript) TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

Q. State your name and address?

A. S. B. Dorsey, Greenville.

Q. At the time Benjamin O'Neal was killed what position did you hold in Greenville?

A. With the police department.

Q. Prior to that had you served in a position with the state department?

A. Yes, sir, about thirteen years. I was director of bureau of investigation.

Q. Were you present when either one of the petitioners, Lloyd Ray Daniels or Bennie Daniels was arrested?

A. Yes, sir, when both were arrested I was present.

Q. I don't believe you went to Williamston on any trips?

A. I was present when we carried Bennie down there.

Q. Were you on the automobile?

A. Yes, sir.

Q. Hear any statements he made?

A. Yes, sir. I didn't make any notes on it. He made the statement that Lloyd Ray done the most of the murdering of Benjamin O'Neal.

Q. Did anybody offer any inducement to him, or threaten him, or slap him, or tell him it would be better to make a statement?

A. No, sir, no threat.

Q. Anything done to him?

A. No, sir.

Q. Any weapon drawn on him?

A. No, sir.

Q. Did Sheriff Tyson, or you, or anybody make any statement to him that he had to make a statement?

A. No, sir, didn't make any threats. Told him he didn't have to make a statement.

Q. Were you present later on when a statement was made in Williamston?

A. No, sir.

Q. Were you down there when a written statement was made?

A. No, sir.

Q. On this occasion when you was in the car with Bennie was that the only time you was with any of them when a statement was made?

A. No, sir. I was with both when they were brought back from the asylum and from the State Prison too.

Q. Who was with you when they were brought back from Raleigh?

A. Me and Mr. Tyson and Mr. Manning.

Q. Did they make statements on that occasion?

A. Yes, sir, we were right beyond Finch's Mill coming from Raleigh to Wilson. We stopped on a curve above Lamb's School. Mr. Tyson took the bloody clothes and spread them on the hood of the car and told them to point out their clothes and they pointed them out and we laid them on separate piles.

Q. Did they make statement about who killed O'Neal?

A. Yes, sir. Bennie said he hit Mr. O'Neal with a brick and a plank and tobacco sticks but he didn't cut him.

Q. Did Lloyd Ray have anything to say about it?

A. Yes, sir, said he hit him with a plank and brick but said he didn't cut him.

Q. Did anybody threaten them or slap them or tell them they had to make a statement?

A. Yes, sir, we were as close to the highway as from me to you.

Q. Anybody tell them it would be better to make a statement, would be lighter on them?

A. No, sir.

Q. You were not present in Williamston?

A. No, sir. The night we put Bennie in jail in Williamston I was there. I pulled off his top shirt and his under-shirt was dirty and he had a box of cundrums in his pocket.

Q. You helped search him?

A. Yes, sir.



Q. Any signs or cuts on him?

A. Yes, sir, I believe on his hands.

Q. Where was that?

A. I think on his hands.

Q. It was not under his undershirt?

A. No, sir.

Q. Did you attempt to make fingerprints?

A. Yes, sir, I tried all on the inside and outside of the car but prints were smeared so I couldn't get them.

Q. Could you develop any?

A. No, sir.

Q. Did you try on the tobacco sticks and bricks and things like that?

A. Yes, sir.

Q. You helped bring them back from Goldsboro?

A. Yes, sir.

Q. Was anything said then?

A. Yes, sir, right at Ormondsville, just me and Mr. Manning and Bennie and Lloyd Ray. Mr. Manning asked them were they still sorry they killed Mr. O'Neal and Bennie said, "Yes, I been praying at the prison about it. A man been praying with us at prison about it". I said, "Who is that man?" He said he didn't know. I said, "Was it Chaplain Jackson?", and he said "Yes, that's the man." But Lloyd Ray said he didn't know anything about it. I said, "Somebody been talking to you?", and he said, "Yes".

THE COURT: You mean about the crime?

A. Yes, sir.

OSCAR ARNOLD (Federal Transcript) TESTIFIED AS FOLLOWS:

#### DIRECT EXAMINATION

Q. Please state your name?

A. Oscar Arnold.

Q. Where do you live?

A. Greenville.

Q. Living there in 1949?

A. Yes, sir.

Q. What was your employment then?

A. At that time stenographer, clerk and assistant desk sergeant for the city police department.

Q. Are you so employed at this time?

A. Yes, sir.

Q. Is it in testimony that you went to Williamston on Tuesday night following this alleged homicide?

A. That's correct.

Q. You know anything about any confessions or statements having been made before that time?

A. No, sir, I don't.

Q. Were you at Williamston when Lloyd Ray and Bennie Daniels made the statements that have been testified about here?

A. Yes, sir.

Q. Tell us what you did with respect to their statements?

A. They just told me what they did on the night, I believe February 5th.

Q. Did each one tell you himself, by himself?

A. Yes, sir, told me what they did on the night of February 5th as best they could remember it. I took it down in shorthand and typed it out on the paper so frequently used here.

Q. In Williamston?

A. Yes, sir, in the Sheriff's office.

Q. Will you state whether the statements after you had transcribed them were read to them?

A. Yes, sir, Lloyd Ray's was read twice and Bennie's was read once.

Q. What did they say?

A. That that was the best they could remember what they did.

THE COURT: Why was Lloyd Ray's read to him twice?

A. First Page read it right after I finished it and then took it back there after I finished writing Bennie's and Lloyd Ray's and Bennie's were read to them.

Q. State whether or not anybody hit them or threatened them or offered any violence?

A. No, sir.

Q. State whether anybody there offered them any inducement or reward or promise of reward?

THE COURT: They don't contend anybody offered them anything. They contend they were frightened, struck by one of the officers and threatened to be killed unless they made statement as the officers wanted it.

Q. You started about whether any threats were made?

A. There were no threats made.

Q. What was their attitude with respect to making the statements?

A. They were talking as freely as you are asking questions.

Q. State whether or not they made the statements immediately upon being brought down?

A. Made them immediately after being told they didn't have to make them if they didn't want to and if they did make them they could be used in court or anywhere else against them.

Q. Did you identify the statements in the trial in the Superior Court?

A. Yes, sir.

Q. I ask you if these are the statements you transcribed?

A. They are.

Q. How about this one?

A. That one too.

Q. Were they signed in your presence?

A. Yes.

Q. Did Bennie Daniels sign that himself?

A. Yes, with my pen because it was a ball pen and didn't care how much he bared down on it. Lloyd Ray said he couldn't sign his name and Chief Page signed it and Lloyd Ray made his mark.

L. E. MANNING (Federal Transcript) TESTIFIED AS FOLLOWS:

RE-DIRECT EXAMINATION

Q. Mr. Manning, it has been stated, I don't know whether by you or not, that you or one of the officers took these petitioners to the Central Prison. State whether or not they made any statements between themselves or among themselves on the way to Central Prison about the alleged homicide?

A. They said they were sorry they did it and wouldn't have done it if they hadn't been drinking, that drinking was the cause of them doing it.

Q. Was that a conversation they had among themselves?

A. One of them was talking to the other one and talking about they had themselves in a mess and said they wouldn't have done it if they hadn't been drinking.

SHERIFF R. W. TYSON (Federal Transcript) TESTIFIED AS FOLLOWS:

RE-DIRECT EXAMINATION

Q. When you arrested Lloyd Ray Daniels who was present?

A. Deputy Sheriff Mills, Deputy Sheriff Manning, Mr. Dorsey, Mr. Gibbs and officer Corbett.

Q. What Manning?

A. L. E.

Q. Which of those got in the car and went to Williamston with you?

A. Gibbs, L. E. Manning and I.

Q. What became of Mr. Corbett and Mr. Mills?

A. Went back to Greenville.

Q. Were they ever present when any of the statements were made by the petitioners?

A. No, sir.

Q. Were they there Tuesday night when written confessions were supposed to be signed?



- A. No, sir.
- Q. Who was present when the written confessions were signed?
- A. L. E. Manning, Chief Page, S. G. Gibbs, Oscar Arnold, Roy Peel, myself, and Sheriff Roebuck, who is dead.
- Q. Was Claude Manning present?
- A. No, sir, he was with them when they got the clothes from Lloyd Ray's home.
- Q. Was Ray Smith present?
- A. Ray Smith was present when Bennie was arrested and when we went to Williamston.
- Q. He has testified?
- A. Yes.

SHERIFF RUEL W. TYSON (State Transcript) TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

- Q. You say you and Manning and Gibbs took him on the car?
- A. Took him on the car to Williamston. On the car I told Lloyd Ray any statement he made would be used against him in court. I began to talk to him.

DEFENDANTS OBJECT to any voluntary statement.

- Q. BY THE COURT: Did you make any threat to him, or threaten him in any way to obtain any statement from him?
- A. No, sir, there was no threat made.
- Q. BY THE COURT: Did you offer any coercion?
- A. No.
- Q. BY THE COURT: Or force of any kind?
- A. No.
- Q. BY THE COURT: Any reward?
- A. No.
- Q. BY THE COURT: Any inducement?
- A. No.

Q. BY THE COURT: Was the statement made by him made voluntarily on his part?

A. It was.

DEFENDANTS WOULD like to offer rebuttal evidence in the absence of the jury.

To the competency of the evidence sought to be elicited of Sheriff Tyson the defendants object, contending that any statement made by either of the defendants was not freely and voluntarily made. Whereupon the Court in the absence of the jury heard testimony bearing upon the circumstances surrounding the making of the statement as follows:

BY THE COURT: I will let him state what was said and what was said between them relative to the statement.

#### RE-DIRECT EXAMINATION

By Mr. Bundy:

Q. Is there anything other than what you have said was said between you and him before he made the statement, if so relate that.

A. I warned him that any statement he made would be used against him in court.

Q. BY THE COURT: Did anybody say to him that it would be better for him to tell the truth? Was anything like that said to him?

A. No, sir.

Q. Was anything said to him by you or any of the others that it would be lighter on him?

A. No.

Q. Did you hold out any hope of reward or lightening of punishment or anything of that kind?

A. No.

Q. Did you offer him any inducement to make the statement?

A. No.

- Q. You said you didn't make any threats or no threats were made?
- A. No threats were made.
- Q. Did you attempt to make any?
- A. No.
- Q. Did any of you attempt to do him any physical harm?
- A. We did not.

### CROSS-EXAMINATION

- Q. BY THE COURT: Were you present when he dictated the statement to the stenographer?
- A. Yes, sir, I was present all the time.
- Q. Did you hear what he said?
- A. Yes, sir.
- Q. Have you read that statement?
- A. Yes, sir.
- Q. Does that correspond with what he said to the stenographer?
- A. It does.
- Q. Was any threats made to him at that time, or coercion or threat by you?
- A. No, and if you will allow me to make this statement. After statements were all made and read to Lloyd Ray and Bennie—
- Q. Was Bennie there?
- A. Yes, he made a statement and signed it.
- Q. Were they all made in each other's presence?
- A. Yes, made in each other's presence; one heard what the other said. After these statements were made, read and signed I talked to Bennie and Lloyd Ray in the presence of these other officers and asked them if anybody had offered them anything, or threatened them, if anybody hit them or offered to do them any harm or anybody cursed them and they both spoke up and said "Nobody hit us, cursed us or mistreated us in any way and every one of you have been as nice to us as

you could be. That was in Sheriff Roebuck's office in Williamston.

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- Q. Who was with you when he was arrested?
- A. Mr. Dorsey, Mr. Gibbs and Ray Smith, a fireman.
- Q. Did you tell him what you were arresting him for?
- A. Yes, sir, told him we were arresting charging him with murder of William Benjamin O'Neal. After I told him what he was arrested for I warned him that any statement he made would be used against him in court when he was tried.
- Q. Did you tell him it would be better for him to tell the truth?
- A. I did not.
- Q. Did you say anything to him about any reward or offer any inducement for him to make a statement?
- A. I did not.
- Q. Did you exhibit any force or coercion in any way?
- A. I did not.
- Q. Was the statement made by Bennie made freely and voluntarily on his part?
- A. It was.
- Q. Was that later reduced to writing?
- A. That was later reduced to writing at the same time Lloyd Ray was in Sheriff Roebuck's office.
- Q. After you arrested Bennie where did you talk to him?
- A. At Williamston.
- Q. Did you put them in the same cell?
- A. They were in the Martin County jail, whether they were in the same cell I don't know.
- Q. Did any member of the officers present when Bennie was arrested make any offer or inducement to him to make a statement?
- A. They did not.
- Q. Or threaten or coerce him in any manner?
- A. Did not.



BENNIE DANIELS (State Transcript) TESTIFIED AS  
FOLLOWS:

DIRECT EXAMINATION

Q. BY THE COURT: Which one slapped you?

A. I don't know that; I know them when I see them but I don't know their name.

Q. Do you see the officers here that were there that night?

A. I see some of them. This man that was up here a while ago was.

Q. Is he the one that slapped you? Sheriff Tyson?

A. No, sir.

Q. Who else was there?

A. Mr. Gibbs.

Q. Did he slap you?

A. No, sir.

Q. Who else was there?

A. Mr. Manning.

Q. Did Mr. Manning slap you?

A. No, sir.

Q. Who else was there?

A. Some of the other laws from Williamston.

Q. You don't see them in the court room?

A. No, sir, and there were some more men up there.

Q. BY THE COURT: Which one of the officers was it here that slapped you? Was Chief Page there?

A. I don't know him.

Q. Did you say one of these officers slapped you or some other officer slapped you?

A. Some other officer slapped me.

Q. You don't know whether it was one of the Williamston or Greenville officers?

A. One of the officers; I don't know who he was.

Q. BY THE COURT: Were all the officers in there talking at the same time?

A. No, sir.

Q. BY THE COURT: Who was in there when you say they slapped you?

A. That fellow sitting yonder.

Q. BY THE COURT: Mr. Gibbs?

A. Yes, sir, and that man sitting yonder.

Q. BY THE COURT: Chief Page?

A. Yes, sir.

Q. BY THE COURT: Was he the one that slapped you?

A. No, sir.

Q. BY THE COURT: They were in there when you were slapped?

S. G. GIBBS (State Transcript) TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

Q. You just heard Lloyd Ray say what happened that night. He said you had your hand on your pistol and said you were going to kill him if he didn't tell the truth he would never see his mother again, etc. What of that, if anything?

A. None of that he stated happened.

Q. What did happen?

A. We arrested Lloyd Ray at the house on L. O. Whitehurst's farm near Stokes. We took him back to the car, half or three-quarters of a mile of the place he was arrested. Sheriff Tyson, Mr. Manning and myself took him in the car and started to Williamston. I don't think we had him in the car over ten minutes. We questioned him about the crime and he said he might as well tell us the truth, and made the statement.

Q. Did you offer any force or violence toward him?

A. No, sir.

Q. Did you put him under any fear?

A. No, sir.

Q. Did you say anything to him to scare him?

A. No, sir.

Q. Did you offer him any reward?

A. No, sir.

Q. Did you hold out any hope of reward?

A. No, sir.

Q. Did you offer him any inducement?

A. No, sir.

Q. Did you curse him or use any profanity?

A. No, sir.

Q. Did you curse him?

A. No, sir.

Q. Did you get your gun out?

A. No, sir.

Q. Did you have your hand on your gun and tell him he would never see his mother again?

A. No, sir.

Q. Did you tell him you were going to kill him?

A. No, sir.

Q. Did any of you use force or attempt to use force, offer him any reward, hope or reward or offer any inducement or any of you tell him it would be better and would go lighter on him?

A. No, sir.

Q. Did you warn him if he made any statement it would be used against him?

A. Sheriff Tyson warned him that anything he said would be used against him. In questioning him about this matter Lloyd Ray said he might as well go ahead and tell us the truth about it.

Q. Did he tell you about it then?

A. Yes, sir, he did.

Q. Did you reduce it to writing? In general did you write what he said?

A. Yes, sir.

Q. Did you get that signed by him afterwards?

A. He said he couldn't sign his name; he made his mark on the bottom of the second page; that was before we got to Williamston.

Q. Did you write that as you were riding along?

A. Yes, sir, under a flashlight on my note book in my handwriting.

- Q. Were you present in Williamston when he and Bennie made that statement?
- A. Yes, sir, I was.
- Q. Did you slap either one of them?
- A. No, sir.
- Q. Did you curse either one of them?
- A. No, sir.
- Q. You are now connected with the S.B.I.?
- A. Yes, sir.
- Q. Did anybody there at Williamston offer any violence toward either one of these defendants?
- A. No, sir, did not.

DEFENDANTS OBJECT, OVERRULED.

- Q. Was anything done there toward inducing them to make a statement, any offer of reward or hope of reward, or any statement made to him by anybody that it would be better for him?
- A. No, sir.
- Q. Was each of their statements freely and voluntarily made?
- A. It was.
- Q. Was a man there that was crippled in the leg?
- A. Not an officer there; the stenographer who took it down is crippled. Oscar Arnold.
- Q. Is he up here?
- A. He is not up here this morning. He does clerical work at the police station.
- Q. Did he offer to hold out a reward or hope of reward or inducement?
- A. No.
- Q. Did he take it down in shorthand as they told it?
- A. Yes, sir, then he transcribed it on a typewriter.
- Q. Was it read back to them?
- A. Yes, sir.
- Q. Did they sign it?
- A. Lloyd Ray made his mark; he said he couldn't sign his name. Bennie signed his.

- Q. Did you see Bennie when he signed it?  
A. Yes, sir.  
Q. Did you witness it?  
A. Yes, sir.  
Q. Is that the signature he made at that time in your presence?  
A. It is.  
Q. Did you see this boy make his mark?  
A. Yes, sir.

## CROSS-EXAMINATION

- Q. You questioned him where?  
A. In the Sheriff's office in Martin County.  
Q. Who was there?  
A. Sheriff Roebuck, Sheriff Tyson, Chief Page, Mr. Arnold, Capt. Dorsey and myself.  
Q. BY THE COURT: Were you there all the time?  
A. Yes.  
Q. Did you slap him?  
A. No, sir.  
Q. Did anybody slap him?  
A. No, sir.  
Q. Threaten him?  
A. No, sir.  
Q. Coerce him?  
A. No, sir.  
Q. Who signed Lloyd Ray's name?  
A. I believe Mr. Page did and he made his mark and we witnessed his making his mark. He said he couldn't sign it.  
Q. When you got this alleged statement that Bennie was supposed to have signed were you there?  
A. Yes, sir.  
Q. Was Bennie in there at the time it was signed?  
A. Yes, Bennie signed it himself, his statement.  
Q. When did you read it to him?  
A. I believe Mr. Page read it to him before he signed.



Q. To each one of them?

A. Yes, sir.

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L. E. MANNING (State Transcript) TESTIFIED AS FOLLOWS:

CROSS-EXAMINATION

Q. Will you tell us who slapped these prisoners?

A. I sure couldn't; nobody.

Q. You know he was hit?

A. No, he was not. I know he wasn't hit.

Q. You were there weren't you?

A. Yes, I sure was. He was not hit by anybody after he was arrested up to now when he was in our custody.

Q. You just talked to him and scared him to death?

A. We talked to him; I don't think we scared him to death.

Q. He was handcuffed?

A. Yes.

Q. You had your pistol?

A. Yes.

Q. Your black-jack?

A. No, I don't even carry a black-jack; I wouldn't know what to do with it.

Q. At the time you got this statement and this one here, alleged confessions do you know whether or not these boys had had any contact with their people?

A. I do not know; so far as I know they hadn't.

Q. Or whether they had consulted any lawyer?

A. Not to my knowledge.

Q. BY THE COURT: Did they make any request in your presence at any time to see any attorney or anybody else?

A. No.

Q. You say you did warn them of their rights?

A. The Sheriff did.

Q. Advised them of their rights?

A. That is correct.

Q. Do you think they understood what the Sheriff meant by what he said to them?

A. I think so.

Q. Can you repeat what the Sheriff said to them?

A. I believe his words were "You know that anything you say later can be used against you." I couldn't put it in his exact words.

Q. You wouldn't deny that it was something else besides what you said?

A. I know they were warned in words to that effect whether it was the exact words I stated.

Q. You would look at him and tell he was scared to death?

A. I don't think Lloyd Ray was scared. He looked just as calm as he does now.

Q. He didn't talk that way?

A. He talked alright.

Q. You heard Mr. Gibbs threaten him in the car?

A. No, sir.

Q. Didn't you hear him tell him he had better admit this murder if he wanted to see his mother again?

A. No, sir, I did not.

Q. You got out of your car a little while?

A. I got out when it stopped with car trouble.

Q. Did you know Mr. Gibbs had this alleged confession?

A. Yes.

Q. Did he show it to you?

A. He showed it to me after we got to Williamston. I heard Lloyd Ray; of course he was talking to all of us and Mr. Gibbs had his flashlight and was writing in the back seat as we were driving along and didn't stop anywhere until we had trouble with the car. That was the night he was arrested.

Q. Did you tell Sheriff Tyson that Mr. Gibbs had this confession?

A. Yes.

Q. So the Sheriff knew it at the time?

A. I didn't tell him that right there as I know of but he knew the next morning we had it.

- Q. He knew it before you got that last one?
- A. He knew he had a kind of detailed notes of it. He went back up there and they both were talking to Bennie and Lloyd Ray and each one made the statement; then, we got them together and they both made it in the presence of each other, then is when we wrote this last one out and Bennie signed it and Lloyd said he couldn't write.
- Q. Nothing was said to them only the fact they went ahead and made this settlement?
- A. We asked them about it; we didn't make no threats on them at all.

CHIEF L. D. PAGE (State Transcript) TESTIFIED AS FOLLOWS:

CROSS-EXAMINATION

- Q. You are Chief of the Police force?
- A. Yes, sir.
- Q. Who was it hit Bennie Daniels that night over there?
- A. He was not hit.
- Q. How many officers were there at the time?
- A. There were several.
- Q. Standing all around asking him questions?
- A. No, the Sheriff and I did most of the questioning?
- Q. He was handcuffed?
- A. No.
- Q. Did you hear the testimony a while ago?
- Q. BY THE COURT: You are talking about the questions asked him in Williamston?
- A. Yes, sir.
- Q. He was in the Sheriff's office over there?
- A. Yes.
- Q. How long was Bennie in the Sheriff's office at that particular time?
- A. Possibly an hour or an hour and a half, I don't remember. Lloyd Ray was there too, both in the office at the same time.

Q. The same room?

A. There were two rooms, one I believe they call the State Highway Patrol but the door was open between them.

Q. But you had them in separate rooms?

A. Yes, to start with.

Q. What do you mean?

A. When we read the confessions to them we got them together and let them make a statement in the presence of each other, then we read the statements to them and asked if that was correct and they said it was and we let them sign it.

Q. You questioned them in separate rooms?

A. There is a door between but it was open.

Q. There was a door between. How long did you question them?

A. We really didn't have to question them; they voluntarily told us as soon as we asked them about it, said they wanted to make a statement.

Q. You were there how long?

A. An hour and a half, or something like that. Lloyd Ray was about like he was on the stand here; he would rattle off and you would have to stop him long enough for the stenographer to get it.

Q. Who signed his name?

A. I signed his name and he put his mark.

Q. That's your writing down there?

A. The name is his; the mark is his; he made the cross mark.

Q. But he made it when you told him?

A. Yes, I told him.

Q. That's your handwriting there?

A. Yes, but the mark there is his.

Q. Which you told him to put on there?

A. I told him to put the mark there, yes, asked him to.

Q. Do you know who wrote Bennie's name to his alleged confession?

A. Bennie himself.

Q. Who made him do it?

A. Nobody.

Q. Who told him to do it?

A. I asked him. I read it to him and asked him if that was correct and he said it was and I asked him to sign it and he said it was.

Q. The notes were taken down by a stenographer?

A. Yes.

Q. You are not attempting to testify as to the accuracy?

A. No more than from memory.

Q. You are not swearing it was exactly right?

A. I read it to him and he—

Q. I asked you this: You are not attempting to swear to the exactness or accuracy of the transcript?

A. I'm not swearing to the shorthand marks because I don't know.

Q. Was the stenographer who took the notes down lame in any way?

A. Yes, I think he has had infantile paralysis and is crippled in both legs I think.

Q. BY THE COURT: Were those statements made freely and voluntarily by both defendants?

A. Yes, sir.

Q. BY THE COURT: Any inducement or reward or hope of reward?

A. No, sir.

Q. BY THE COURT: Any coercion or violence demonstrated?

A. No, sir.

Q. BY THE COURT: Were either of them hit or slapped?

A. No, sir.

OSCAR ARNOLD (State Transcript) TESTIFIED AS FOLLOWS:

#### DIRECT EXAMINATION

Q. Are you employed at the City Police office here?

A. Yes, sir, as clerk.



Q. Were you at Williamston the night the statements were made?

A. Yes, sir.

Q. Did you take them down in shorthand?

A. Yes, sir.

Q. As they told it?

A. Yes, sir.

Q. Then what did you do?

A. Typed it out.

Q. Took down what the defendants said, each word as he said it, using the identical words?

A. Yes, sir.

#### DEFENDANTS OBJECT.

A. I typed them and it was read back to him as he said it by Chief Page and they were asked was it right and they said "Yes" and they were asked to sign them and did. Lloyd Ray said he couldn't.

Q. BY THE COURT: In writing did you add to or detract from any word they used in making the statement?

A. I did not.

Q. BY THE COURT: Was it transcribed exactly as made?

A. It was.

Q. BY THE COURT: Did anybody use coercion?

A. No, sir.

Q. Did anybody hold out any reward or hope of reward or offer any inducement?

A. No.

Q. Was the statement freely and voluntarily made?

A. They came out and made them after they were asked what they did that night.

Q. Did you take the statements down as they were given?

A. Yes, sir.

Q. Did anybody slap him?

A. Nobody slapped him.

RAY SMITH (State Transcript) TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

Q. Were you present when Bennie was arrested?

A. Yes.

Q. Did you go to Williamston?

A. Yes.

Q. Did he make a statement in the car?

A. Yes.

Q. Was it made freely and voluntarily?

A. Yes, sir.

Q. Was any violence or attempt of violence?

A. No.

Q. Were they put in fear or coerced?

A. No.

Q. Was there any offer of reward or hope of reward or any inducement held out to him?

A. No, sir.

Q. Did anybody slap him?

A. I didn't see anybody slap him.

L. E. MANNING (State Transcript) TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

Q. You took Lloyd Ray downstairs from upstairs with the jailer?

A. Yes.

Q. Was Bennie in there then?

A. No. We taken Lloyd Ray down and talked with him, and after we got through talking with him we went back and got Bennie, brought him down, talked to him separate and then got them together and they made the same statement.

Q. How long was Lloyd Ray in there before he made the statement?

A. He started making the statement as soon as we went in there.

Q. After he made his Bennie was brought in and questioned and he made his?

A. That's right.

Q. How long was Bennie in before he made his statement?

A. As soon as they started asking questions he started answering them right off, wasn't any length of time. Mr. Arnold taken them in shorthand as they were said and then we went to the typewriter.

Q. About how long were you in their altogether?

A. I don't know; I don't think it was more than an hour or an hour and a half.

Q. You mean from the time you first went in with Lloyd Ray until it was over?

A. That's right.

Q. Did you write his name?

A. No, sir.

Q. Did you make his mark?

A. No, sir.

#### RE-DIRECT EXAMINATION

#### THE COURT:

Upon the voir dire conducted by the Court for the purpose of determining the admissibility of certain statements alleged to have been made by each of the defendants to the officers subsequent to arrest, the Court finds as a fact that the statements of each of the defendants, Bennie Daniels and Lloyd Ray Daniels, referred to by the witnesses, were made freely and voluntarily, not induced by offer of reward or hope of reward, nor extorted by either coercion, intimidation or exhibition of any force, and that each of the statements of each of the defendants was freely and voluntarily made by him.

TO THE FOREGOING RULING THE DEFENDANTS AND EACH EXCEPT.

## STATE'S EXHIBIT 8.

C. B. ROEBUCK  
SHERIFF OF MARTIN COUNTY  
WILLIAMSTON, N. C.

I, Laura Ray Daniels, of my own free will and accord without promise of reward or of threat of bodily harm and after being told that this statement could be used in court against me, make the following statement.

I took some liquor with some boys in Greenville and Benny and myself got together at the Bus Station where we planned to get a cab to carry us out home, and we planned to rob the cab driver. We went out the Washington highway to where we turned left on the Alvin Hill road and I told him to drive down to those two tobacco barns. Benny said get his money after we had stopped at the tobacco barn and he threw his knife around his throat. Then, he handed me his belt and told me to tie him, he said he might have a pistol. I took Benny's belt and tied his hands. Then I took my belt also and looped it around his arms. Then I reached in his pocket with my left hand and got his billfold and searched it. There was nothing in the billfold, so I throwed it down in the foot of the car. Then I reached my hand (left hand) in his coat pocket and got his money. There was about three or four .50's and one bill. I handed it back over the seat to Benny. We told the driver to get out of car and I slid out of the car under the steering wheel the same way the driver got out. When I got out on the ground the driver William O'Neal hit me and had a knife in hand. I grabbed his hand and we went down to the ground. The belts must have come loose when we got out on the ground. We began rolling and Benny was standing over us. We rolled to and into the tobacco barn. We had planned to kill the driver William O'Neal before we got the taxi to carry us home. We were in the tobacco barn. I was cutting something, it might have been the ground with O'Neal's knife which I had taken away from him. While we were in the tobacco barn. I could not tell

where Benny was cutting him or not. It was so dark that I could not see what I was cutting and we were laying side by side. We fell up against the door and rolled back out of the barn. We beat him with some tobacco sticks and beat him down on the ground. Benny told me to keep him down until he got back and he went around the barn and come back with two bricks and a tobacco cart slide. Benny gave me the truck raleing and he hit him with one of the bricks. When Benny hit him with the brick, I kicked the other brick out of his hands. Then I hit him with a cart side over the head. We seen that he were dead then. While we were in the car and Benny had his knife around his throat, he told us not to kill him, he said you boys are just children and we told him to get out. After we killed him, we left and went home to mama's house, and pulled off our clothes and went to bed. We got up the next morning about 7:00 o'clock and caught a bus and went back to Greenville. We went to where my sister were staying. My sister and Lonzo Hardy came in and I told my sister to go tell my mother to destroy those clothes that we wore the night before. I had told my mother that we were in a fight before in Greenville, and that I had got cut and got blood on my clothes. Me and Benny left and went down the railroad and I stopped and told Benny that I was going back and was not going to run. Benny told me I was a fool to go back, that I would get caught. I told him that I would get caught anyway. I just as well get caught now. I went back to my sister's and told her I was going across the river to me girl friend's house. Benny said he was going to stay in the woods until it got dark. I went across the river to my girl friend's home and lay down across the bed and that is where the officers found me.

(2nd page)

The fore-going statement was made and signed by me this, the 8th day of February 1949 in the Sheriff's office



in Martin County, before the following officers, whom I know to be officers of law.

Witnesses:

Ruel W. Tyson

Lester D. Page

S. G. Gibbs, S. H. P.

L. E. Manning

(Signed) Laura Ray x Daniels  
his  
mark

### STATE'S EXHIBIT 9

C. B. ROEBUCK  
SHERIFF OF MARTIN COUNTY  
WILLIAMSTON N. C.

I, Bennie Daniels, of my own free will and accord, without promise of reward or of threat of bodily harm and after being told that this statement could be used in court against me, make the following statement.

Me and Laura Ray were in Bonner's Lane in Greenville about 8:30 o'clock Saturday night. Then, I told him to let's go home after the boys started fighting him and he said O. K. Then, we went on around to the bus station and the bus had not come so he said let's catch a cab. I told him I did not have enough money to help him pay it, and he said he was going to pay for it. We went and asked the cab driver to take us home "William O'Neal" the one we killed. Then, after he told him where we were going, we went on down there and turned to the left on a dirt road toward the river. He told the driver to turn up in the barns because he could not turn around on down the road. He put his knife around the man's neck and the man put up his hands, and I took our belt and tied his hands. Then, we went on in the barn, while we were in the car, Laura Ray asked him where his money was, and he said he didn't have but a dollar and a half, because he just started to work this afternoon. After we got in the barn we had a fight Laura Ray cut him while he was in the barn. We drug him out of the barn and layed him down on the ground. We both got some sticks from under the shelter

and beat him. Then, Laura Ray went and got 2 bricks and I beat him with the railing one lick. I threw it down and Laura Ray picked it up and he also struck the man one time with the railing. Then, we left and walked to Laura Ray's home. Me and Laura Ray's changed clothes and then me, Laura Ray, and Laura Ray's sister and his other sister's boy went back to the store and got some drinks. We left the store and went back home and went to bed. We left the next day about 11:30 or 12:00 o'clock and caught the bus to Greenville. We went aound to my cousins then we left there and went to where his sister lives. While we were there his other sister and two men came in and we all went up stairs. Hardy called me down the stairs, then Hardy told me about the man getting killed. After Hardy told me, I called Laura Ray down stairs and told him. We left there and went down the railroad. We turned off the railroad and went in the woods. We stayed out there about 30 minutes and Laura Ray left me in the woods. I stayed in the woods until night and Laura Ray left. When night come, I left the woods and went back to my cousins, (Gertrude Pratts'). I stayed there that night and until about 12:00 o'clock the next day. I left there and went out and caught a ride to Bell Forks. Then I stayed at some boys houses until about 1:00 o'clock. Then I went from home down to Moore's house where I was arrested Tuesday morning about 5:00 o'clock.

(2nd. page)

The foregoing statement was made and signed by me this 8th day of February 1949, in the Sheriff's office in Martin County, before the following officers, whom I know to be officers of law.

(Signed) Bennie Daniels

Witnesses:

Ruel W. Tyson

Lester D. Page

L. E. Manning

S. G. Gibbs

NORTH CAROLINA

PITT COUNTY

IN THE SUPERIOR COURT

STATE

vs.

BENNIE DANIELS and  
LLOYD RAY DANIELS

O R D E R

THIS CAUSE coming on to be heard, and being heard by consent on September 29, 1949, before the undersigned Judge of the Superior Court, at Kinston, North Carolina, upon motion of Wm. J. Bundy, Solicitor Fifth Judicial District, to strike out defendants' statement of case on appeal for failure of defendants to make up and serve statement of case on appeal within time fixed by the Court, the State being represented by Wm. J. Bundy, Solicitor Fifth Judicial District, and the defendants by Herman L. Taylor and C. J. Gates, the Court finds the following facts:

The above entitled case was tried before the undersigned Judge of the Superior Court at the regular term of the Superior Court of Pitt County beginning Monday, May 30, 1949. During said week of the trial of this case, it appearing to the Court that said term would expire before the completion of the trial of this case, an order was entered that said term be and the same was thereby continued until this case was completed and disposed of.

From verdict of guilty of murder in the first degree as to both defendants and judgment thereupon of death as provided by law the defendants gave notice of appeal and the following appeal entries were made:

"Notice of appeal given in open Court; Further notice waived, 60 days allowed defendants to make up and serve statement of case on appeal, 45 days there after allowed the State to make amendments thereto or statement of counter-case on appeal."

This case was completed and disposed of, and Court adjourned on June 6, 1949.

Statement of case on appeal was left in the office of the Solicitor of the Fifth Judicial District with the Solicitor's secretary, by the attorneys for the defendants on August 6, 1949, and a receipt taken from said secretary, in the absence of the Solicitor, as follows:

"Statement of case on appeal accepted by me this 6 day of August, 1949.

Wm. J. Bundy  
by /s/ Mrs. M. H. Fields "

There was no extension or waiver of time within which to make up and serve statement of case on appeal other than contained in the appeal entries, and none requested.

The Solicitor, in serving amendments or exceptions to the defendants' statement of case on appeal, same being served on Herman L. Taylor, one of the attorneys for the defendants, by the Sheriff of Bertie County, on September 5, 1949, made reservations of rights as follows:

"The undersigned Solicitor of the Fifth Judicial District, not waiving any rights, and specifically reserving and now reasserting exception by the State to the failure of the defendants to serve Statement of Case on Appeal within the time fixed by the Court, and renewing its motion to strike the said Statement of Case on Appeal from the record, objects to the Statement of Case on Appeal as left at the Solicitor's office and offers the following exceptions or amendments thereto:"

Written motion to strike out defendants' statement of case on appeal, for failure by the defendants to make up and serve statement of case on appeal within the time fixed by the Court was filed by the Solicitor, and served on Herman L. Taylor, one of the attorneys for the defendants, by the Sheriff of Wake County, on September 16, 1949.

The defendants, through their attorneys, Herman L. Taylor and C. J. Gates, admit that statement of case on appeal was left in the Solicitor's office with his secretary on August 6, 1949, and that same was not within the time of 60 days fixed by the Court.

The defendants' said statement of case on appeal, left in the Solicitor's office on August 6, 1949, as aforesaid, was not served within the 60 days fixed by the Court for the defendants to make up and serve statement of case on appeal.

It is agreed that order ruling upon said motion may be signed in or out of Lenoir County, and Fifth Judicial District.

IT IS, THEREFORE, ORDERED that the motion of the Solicitor for the State to strike out the defendants' statement of case on appeal be and the same is hereby allowed; and said statement of case on appeal is hereby stricken out.

This the 1st day of October, 1949.

Clawson L. Williams  
Judge Superior Court

To the foregoing the defendants object and except and appeal to the Supreme Court.

Clawson L. Williams  
Judge Superior Court

J. D. JOYNER (Federal Transcript) TESTIFIED AS FOLLOWS:

### CROSS-EXAMINATION

Q. Mr. Joyner, as clerk to the board of commissioners did you write the minutes of the board?

A. Yes, sir.

\*\*\*\*\*

Q. Are these the minutes of the board of commissioners May 5, 1947?

A. Yes, sir.

\*\*\*\*\*

Q. Will you read that paragraph having to do with preparation of the Jury list?



MR. ROGGE: May I see that?

MR. BUNDY: Yes, sir.

MR. ROGGE: No objection.

- A. "On motion of G. H. Pittman, seconded by M. W. Smith, the clerk was instructed to make up, with the assistance of the county attorney, a list of all eligible persons for jury service from the county registration books and/or all the county tax books and/or any other source they may deem advisable. The clerk and county attorney were further instructed to present said list to the board for consideration at the regular meeting on the first Monday in June".

\*\*\*\*\*

Q. When your list went to the commissioners was there any distinction as to what they were as to race?

A. The only distinction was by the township.

THE COURT: You don't mean distinction as to race?

A. No, sir. By township only.

S. M. UNDERWOOD (Federal Transcript) TESTIFIED  
AS FOLLOWS:

**DIRECT EXAMINATION**

Q. You are Sam Underwood?

A. Yes, sir.

\*\*\*\*\*

Q. What position have you held with reference to Pitt County?

A. I served as county attorney.

Q. How long?

A. Mr. Moody, if I recall correctly I was appointed in September, 1946 and served through this month.

Q. I wish you would state what you did with the board of commissioners if you met with them, and what advice you gave them with reference to the drawing of the jury in June, 1947 when a new list was made up for the odd year?

- A. Well, sir, it was in that year that the effect of the amendment regarding women serving on juries was to be felt. After a conference with your office about the matter ow women serving on the juries I met with the commissioners, discussed that phase of it with them and pointed out to them the import of the decision of the Supreme Court of the United States with regard to negroes serving on juries in North Carolina and advised them that they should take every precaution to see that no negro was excluded, since they were going to revise the jury list anyway to go ahead and prepare it absolutely in accordance with the law.

D. T. HOUSE, JR. (Federal Transcript) TESTIFIED AS FOLLOWS:

#### CROSS-EXAMINATION

- Q. Does your recollection enable you to state whether any negroes have been customarily drawn on the panel since 1947?
- A. We have had negroes on practically all the panels since 1947. I couldn't say but sometimes one and sometimes two. I have seen as high as four or five.
- Q. Isn't it a fact they actually serve on the petit juries?
- A. Yes, sir.
- Q. In criminal as well as civil cases?
- A. Yes, sir.
- Q. And isn't it a fact that that is not only just a rare occurrence but a common occurrence?
- A. Yes, sir, it is.
- Q. In the term of court at which these petitioners were tried were there not several negroes on the jury panel?
- A. As I recall there was. There had to be because we had one on the jury that tried him.

#### RE-CROSS EXAMINATION

THE COURT: You remember whether any negro was drawn other than the one that actually sat in the case?

A. I remember the negro undertaker. He was not excused until his name was drawn out of the hat.

THE COURT: His name was drawn out of the hat and because of the nature of his business as undertaker he was excused?

A. Yes, sir.

THE COURT: Do you remember whether any other negro's name was drawn from the hat?

A. The negro woman.

THE COURT: She was opposed to capital punishment and I take it the Judge excused her.

MR. BUNDY: I did.

THE COURT: Was any other negro called?

A. I don't remember.

CHARLES P. GASKINS (Federal Transcript) TESTIFIED AS FOLLOWS:

### CROSS-EXAMINATION

Q. You were in office when this panel was drawn for this trial?

A. Yes, sir.

Q. You know of any acts done by anyone to practice discrimination to keep colored people from being on the jury?

A. No, sir. There is no way in the world I know of to tell when the scroll is drawn from that jury box to tell whether the man is white, black, or any color, and no attempt during my sitting in with the board of commissioners during drawing the jury to prohibit any man from sitting on the jury of Pitt County.

W. J. SMITH (Federal Transcript) TESTIFIED AS FOLLOWS:

### DIRECT EXAMINATION

Q. State your name and address?

A. W. J. Smith, Bethel, Pitt County.

- Q. What position do you hold in Pitt County?
- A. None at this time.
- Q. What county office did you hold at the time of this trial and before?
- A. Chairman of the board of county commissioners.
- Q. When did you take office?
- A. December, 1946, I think.

\*\*\*\*\*

- Q. When you received the list was there any mark or anything on the list that disclosed to you the race of anybody on the list?
- A. No, sir. When the list came to us it was divided by district to each of the commissioners and they went over it. Purged any name of any person dead or they felt didn't meet qualifications morally or of sufficient intelligence.

MRS. R. P. WHEELLESS (Federal Transcript) TESTIFIED AS FOLLOWS:

#### CROSS-EXAMINATION

- Q. Did anyone instruct you at all to leave out the names of white people or colored people?
- A. Not that I recall.

MRS. STEVE JOHNSTON (Federal Transcript) TESTIFIED AS FOLLOWS:

#### CROSS-EXAMINATION

- Q. When you made the list up did anybody tell you to leave out any colored people?
- A. No, sir.
- Q. When you got the list back after the commissioners met did you have the same list?
- A. I didn't know any difference.
- Q. It looked about the same?
- A. Yes, sir.

MR. W. J. SMITH (Federal Transcript) TESTIFIED AS FOLLOWS:

RE-DIRECT EXAMINATION

Q. You have been living in Bethel all your life except when in school?

A. Yes, sir.

Q. You are well acquainted with the people who live in that township, both white and colored?

A. Yes, sir.

Q. What is the nature or character of the negro population in Bethel Township with respect to intelligence and avocations?

A. Majority of negroes in our township of course are tenant farmers and day laborers. They have had very little schooling. That situation is improving.

Q. What would you say with respect to the situation as to the negro population in and around Bethel with respect to moral character as determined by court and other things?

A. You are asking about the entire negro population of the township?

Q. Yes, so far as you can say?

A. I have this kind of a situation. We have some fifty or seventy-five that work for us and invariably Monday morning we have five, six or seven we have to pay fines for for rowdiness, drinking and things of that kind Saturday and Sunday.

Q. Is that typical or indicative of the general situation?

A. I think it is.

Q. I will ask you to state whether in the selection of this jury list and deletions in making it up you acted in good faith with respect to the requirements of the law as best you could?

A. That and that alone.

Q. Was it your purpose to get negroes out of the jury panel or to get them in?

A. If I had any preference it was to put every one I thought qualified on. Certainly not to cut any of them out.



J. VANCE PERKINS (Federal Transcript) TESTIFIED AS FOLLOWS:

CROSS-EXAMINATION

THE COURT: What policy did you pursue in putting names in the jury box or on the scroll in respect to age? Suppose a qualified person, negro or white, was of advanced age or years would you put him in the box?

A. No, sir.

Q. You know whether any of these you referred to as being qualified were of advanced age?

A. Yes, sir, Shade Wilson is seventy-two years old.

Q. Did you eliminate any person because of race?

A. No, sir, absolutely not.

MR. BUNDY: That is all.

M. W. SMITH (Federal Transcript) TESTIFIED AS FOLLOWS:

CROSS-EXAMINATION

THE COURT: Did you strike off any individual on account of his or her race?

A. No, sir.

\*\*\*\*\*

Q. What type and kind of negroes generally make up the negro populations in those two townships?

A. You mean as to their quality for serving on the jury, intelligence and moral character? I would say a large part of them wouldn't be competent to serve on the jury. O

Q. For lack of intelligence?

A. Sometime for that and sometime because they didn't have moral character. Of course you find many white people the same way.

Q. Isn't it a fact that almost exclusively the population in these two townships is made up of tenant farmers and farm laborers?

A. That's right. I venture to say seventy-five percent of the colored people of those two townships were just

on the tax books for poll tax. A large portion of them move two or three times a year, some once a year and some in several years but if qualified for jury service otherwise they would not be good for jury service for that reason.

M. D. HODGES (Federal Transcript). TESTIFIED AS FOLLOWS:

CROSS-EXAMINATION

Q. You instructed the clerk of the board of commissioners to prepare list from the registration books and tax list?

A. And any other source.

Q. You didn't stick your head over his shoulder all the time to see what he was doing?

A. No, didn't have time.

Q. Is county commissioner a full time occupation?

A. No, sir.

\*\*\*\*\*

Q. How long have you lived in that section?

A. Approximately twenty-six years.

Q. Familiar with the type of people that live in that community?

A. I think so.

Q. What about the intelligence and moral character of the colored people in that section?

A. A few of them reliable and big percent of them get in a lot of trouble, lot of drinking and carrying on and petit crimes.

Q. What about their intelligence, ability to sit on a jury and pass on people's lives?

A. Mighty few capable of serving on a jury.  
That is all.

SHERIFF RUEL W. TYSON (Federal Transcript) TESTIFIED AS FOLLOWS:

## RE-CROSS EXAMINATION

- Q. You are in court practically every court?
- A. Most every court. We have had a few criminal courts when I was sick and been so I didn't attend.
- Q. Do members of the negro race serve, drawn and are in court at practically every term of court?
- A. Most every term of court there are some.
- Q. Are there as many as several on each panel?
- A. I don't know what court but I remember one court this year that I have seen as many as four sitting on one case.

THE COURT: You mean in the box?

A. Yes, sir.

THE COURT: Was that a criminal case?

A. I am not positive but I believe it was.

THE COURT: You know whether the defendant in that case was white or negro?

A. I don't recall.

- Q. Have you seen negroes sitting in the box on a jury when white defendants were being tried?
- A. Yes, sir, I have.
- Q. And I ask you if you didn't see that before the Daniels case was tried?
- A. Yes, sir, I have.
- Q. And since?
- A. Yes, sir.
- Q. And I ask you whether or not you have seen me as solicitor leave them on the jury?
- A. Lots of times.
- Q. Court after court?
- A. Yes, sir.
- Q. And in case after case?
- A. Yes, sir, lots of times.

M. B. HODGES (State Transcript) TESTIFIED AS FOLLOWS:

## DIRECT EXAMINATION

Q. You are Chairman of the board of county commissioners of Pitt County?

A. Yes.

Q. Did you help make up this jury list, the scroll in the box?

A. Yes.

Q. I hand you seven scrolls taken from Jury Box No. 1, all showing a mark with a red pencil. Can you explain why these red marks are on the scrolls?

DEFENDANTS OBJECT. OVERRULED. EXCEPTION.

A. When this list was prepared and given to us each commissioner was given a list for the people in his district. My district is number 5, and in going over that we used a red pencil to make a mark by everybody's name that we thought were qualified to serve. There were two columns on a sheet and we took a pair of scissors and cut them off and they didn't cut all the red mark off.

Q. In making the pencil mark on the right margin the mark extended to the left on the other list?

A. Yes, sir. You take a pencil going over two or three thousand names it will go over on the others.

Q. After each commissioner made a mark indicating the names of persons who were not qualified did the Board of County Commissioners make up the list?

DEFENDANTS OBJECT. OVERRULED. EXCEPTION.

A. Yes, we brought them in to the Clerk and told him to prepare them, and put them in the jury boxes.

MARVIN W. SMITH (STATE TRANSCRIPT) TESTIFIED AS FOLLOWS:



## DIRECT EXAMINATION

- Q. You are a member of the Board of County Commissioners?
- A. Yes.
- Q. Were you in June 1947?
- A. Yes, sir.
- Q. I hand you eight scrolls taken from jury box No. 1 showing a red mark on each scroll. Can you explain to his Honor what caused those red marks to be there?
- A. I can explain the ones that I put on there; it was done in marking off the name next to this name. We used a red pencil to mark through the name of those to be eliminated; that's the way I did it.
- Q. BY THE COURT: Marking through the names opposite on each scroll?
- A. Yes, sir.
- Q. Were the names on sheets of paper two columns to the sheet?
- A. They were on sheets about six or eight inches wide and about ten inches long and the names ran along, a very little space separating the names.
- Q. These names are cut out?
- A. Yes. You see if you mark the one out next to it if you weren't careful you would mark too near it and hit the next name.
- Q. When this little mark came over on this scroll or came over marking out the name opposite?
- A. Yes, that's the way I did the ones I did.
- Q. You said you went over the list and marked out certain ones that you knew and then the commissioners made up the list?
- A. After we got through with the list they were turned over to the Clerk and he clipped out the ones that weren't checked off and then they went in the jury box.

M. B. HODGES (STATE TRANSCRIPT) TESTIFIED  
AS FOLLOWS:



## DIRECT EXAMINATION

Q. I hand you a scroll bearing the name of James Ray Pittman, Ayden, North Carolina. Over "Ayden" is written in pencil "Greenville." Do you know James Ray Pittman?

A. Yes, sir. He lives in Greenville now. When they made up the list they had a lot of the addresses wrong and when we knew they had moved to another township we erased it and wrote it with a pencil. We don't have a typewriter.

Q. BY THE COURT: His residence was corrected on there before it went in the jury box?

A. Yes.

Q. BY THE COURT: Was it passed upon in its present shape by the Board of County Commissioners?

A. Yes, sir, absolutely.

Q. Did you reject any person on the list you adopted except for want of moral character and sufficient intelligence?

A. Personally I did.

Q. What for?

A. Physical disability. Mr. Ken Price in Swift Creek is on crutches; Mr. Alton Chapman.

Q. Except for physical disability, lack of sufficient intelligence or moral character did you reject any one?

A. No, sir.

Q. BY THE COURT: Was any person rejected or excluded when you make up the scroll to put the names in the boxes because of race or color?

A. No, sir.

Q. BY THE COURT: Did you know or did you have any information bearing on the jury list as to each of the persons whose names thereon were white and which were colored?

A. No, sir, we didn't have any way of telling unless we personally knew them.

Q. When the scrolls were put in the jury boxes did you mark any of them in any way to indicate which were

white and which were colored?

A. No, sir.

Q. Is there anything on the scrolls in the jury boxes indicating names of white or colored persons written on them?

A. No, sir. I know there isn't; If there is I can't tell it from looking over them.

Q. Have you examined the scrolls in box No. 1 and Box No. 2 under the supervision of the court?

A. Yes, I have.

Q. BY THE COURT: Did you find any such mark of distinction on any of them?

A. No, sir.

Q. Is there any question about this list being the jury jury list from which the scrolls were taken and put in the jury boxes?

A. No, sir.

CHARLES P. GASKINS (STATE TRANSCRIPT) TESTIFIED AS FOLLOWS:

#### DIRECT EXAMINATION

Q. You are Register of Deeds?

A. That's right

Q. Were you register of deeds in June 1947?

A. No, I went in July 15, 1947.

Q. As Register of Deeds are you clerk to the board of Commissioners?

A. That is correct.

Q. Since the time you have been in that office has this been in your custody and possession?

A. Yes, sir.

Q. Identify it please.

A. This is the jury scroll book. Each time the jury scroll is made up, the first Monday in June of every two years, copy of the names are placed in the jury box. In here we have the jury scrolls for the years 1941, 1943, 1945 and 1947.

Q. The record of the 1947 jury scroll?

A. Yes.

Q. List and scrolls?

A. Yes, sir.

Q. BY THE COURT: Is there anything on this scroll or on that list to indicate whether the person's name thereon is white or colored?

A. Nothing that I know of.

Q. Examine it and see.

A. I have examined it.

Q. Does it contain any mark of identification showing whether or not any person is white or colored?

A. None that I have seen.

Q. Are they now in the condition they were when originally made out?

A. Just exactly the way they were the first time I saw them.

Q. They have been in your possession at all times?

A. That's right.

Q. BY THE COURT: Did you put the scrolls in the boxes?

A. No, sir.

Q. Do you know who did?

A. Mr. J. D. Joyner.

Q. BY THE COURT: You did not make out that list?

A. No, sir.

Q. It was a part of the record of your office when you qualified?

A. Yes, sir.

SAM B. UNDERWOOD (State Transcript) TESTIFIED  
AS FOLLOWS:

#### DIRECT EXAMINATION

Q. What is your vocation?

A. I am a practicing lawyer in this town.

Q. Do you hold an official position with the County?

A. Yes, sir, I am County Attorney.

- Q. How long have you been County Attorney?
- A. It was either 1945 or 1946 that I was first employed.
- Q. Were you County Attorney prior to and during June 1947?
- A. Yes.
- Q. In the capacity of County Attorney state whether or not your duties among other things consisted of advising the board of county commissioners?
- A. They do.
- Q. State whether or not you sit with the board of commissioners and advise them and observe with them in making up the jury list and did so in June 1947?
- A. I didn't actually sit with the board of commissioners all during the time they were doing it.
- Q. BY THE COURT: State what you saw or done.
- A. As a consequence of the adoption of the amendment relating to women serving on juries the county commissioners asked me to assist Mr. Joyner, who was then clerk to the board, in getting an additional list of names so it would comply with that amendment about women. After a conference with the Attorney General of the State of North Carolina—

DEFENDANTS OBJECT. SUSTAINED (Don't state any thing he said).

DEFENDANTS OBJECT to what witness said in reference to the County Board of commissioners and move to strike out.

MOTION DENIED. DEFENDANTS EXCEPT.

- A. After this conference Mr. Joyner obtained a copy of the persons registered to vote in Pitt County by Townships, and Mr. Joyner—the clerk in his office—prepared that list of names and compared that list with the list of tax returns for the prior years. That list, or combination of the two lists, was then submitted to the board of county commissioners. I called the board's attention to the Supreme Court's decision of this State—



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DEFENDANTS OBJECT. OVERRULED. EXCEPTION.

and the Supreme Court of the United States with reference to the exclusion of negroes from the jury list. I was not present when the scrolls were actually cut and was not present, of course, all during the time the board of commissioners were making up the list. That's the explanation that I know of making up the list.

Q. Did you see the list at any time?

A. Yes, sir.

Q. Was there anything on the list to designate whether the ones on there were white or colored?

A. No, sir.

J. D. JOYNER (State Transcript) TESTIFIED AS FOLLOWS:

### DIRECT EXAMINATION

Q. What is your official capacity with the County?

A. Tax Collector and supervisor.

Q. In June 1947 were you tax collector and supervisor?

A. At that time I was Register of Deeds.

Q. As such you were Clerk to the Board of Commissioners?

A. Yes, sir.

Q. I ask you to state whether or not the first Monday of July 1947 you submitted to the Board of Commissioners a jury list?

A. Yes, sir.

DEFENDANTS OBJECT.

Q. Did you lay a list of the tax payers, persons over 21 years of age residing in Pitt County before the board of commissioners in June 1947?

A. Yes.

Q. On the first Monday in July 1947, following that, state whether or not at the regular meeting of the board the scrolls were made out and put into the box?

A. Yes.



Q. You were present as Clerk of the Board when that was done?

A. Yes.

Q. Were you present when the jury list was made out by the Commissioners?

A. Not all together.

Q. BY THE COURT: What part of the time were you present?

A. The list as I had made it up was divided into districts the commissioners represented and I turned that list over to the commissioners. I was present part of the time but I wouldn't state that I was present with them the entire time.

Q. Were you present with the board at its meeting when it considered adopting the jury scroll?

A. Yes.

Q. What was done, if anything, with regard to discussion of the race to which the persons whose names were on the scroll?

A. Not anything to my knowledge or recollection.

Q. While you were present was anybody rejected because of the race to which they belonged?

A. Not to my knowledge.

Q. Was there any rejection except for want of moral character and sufficient intelligence?

A. Not to my knowledge.

Q. You say the list was divided and given to each commissioner for his district?

A. Yes.

Q. In July when the list was actually made up do you say that each commissioner then brought his list back and submitted it to the full board of commissioners?

A. Yes.

Q. At which time did the full board of commissioners approve each list?

A. They approved the list entirely.

JAMES VANCE PERKINS (State Transcript) TESTIFIED AS FOLLOWS:

## DIRECT EXAMINATION

Q. Do you live in Greenville?

A. Yes.

Q. Are you a member of the Board of County Commissioners?

A. Yes.

Q. Were you a member of that board in June 1947?

A. I have been on the board 2½ years. I went in in December 1946. I was elected in the fall of 1946.

Q. Were you on the board when the tax list was prepared in 1947?

A. Yes.

Q. Did the then Clerk to the Board and Register of Deeds submit to the Board of Commissioners the first Monday in June the tax returns for the previous year and a list of those 21 years of age?

A. Yes, that's right.

Q. What was done with the total list? What did you do with respect to any part of it?

A. I checked over the list for Greenville Township.

Q. Did you have any one assist you?

A. Yes, sir, Mr. Gaskins assisted me; he knew some of them that I didn't know.

Q. After you had gone over your list did you return and submit that to the full board of commissioners in July?

A. Yes.

Q. Was it approved then by the Board?

A. Yes.

Q. Was that done with respect to the list each commissioner had for his district?

A. Yes.

Q. Did you eliminate any one from your list for your district because of his race?

A. No.

DEFENDANTS OBJECT. OVERRULED. EXCEPTION

Q. Did you eliminate any one for any purpose than for

lack of moral character and sufficient intelligence?

A. No.

Q. Was there anything to distinguish as to race as to the individual names on the list?

A. No.

Q. Did the board adopt the scrolls and list of jurors?

A. Yes, sir.

Q. In passing on it was any one eliminated by the board except for lack of intelligence and moral character?

A. No.

Q. Was there any discussion by the board when the jury list or scroll was adopted about the race to which any person belonged?

A. No, sir.

Q. Was any distinction made on the basis of race?

A. No.

Q. Was any one excluded on that ground?

A. No.

W. J. SMITH (State Transcript) TESTIFIED AS FOLLOWS:

#### DIRECT EXAMINATION

Q. Were you on the board of county commissioners in 1947?

A. Yes.

Q. At that time I believe you were chairman?

A. That's right.

Q. You are not a member of the board at present?

A. Not at present.

Q. Was a jury list prepared during that year by the board of county commissioners?

A. It was.

Q. Who prepared the list and submitted it to the board?

A. The Clerk to the Board, the Register of Deeds, Mr. Joyner.

Q. Did you direct him and do you know from what he obtained that list?

A. Of course we called in our county attorney, and this list came, as I recall from the registration books, from the tax books and such other sources as we could get them.

Q. When the list was submitted to the full board on the first Monday in June what did you do with it?

A. The list was divided into townships with each commissioner taking the townships in his district and gone over very carefully by each man and any name of any person found of not normal intelligence and moral qualifications was purged; it was then returned to the full board and we went over it again.

Q. Was any list that you made of your district submitted to and approved by the board?

A. Yes, sir.

Q. Was that adopted as the jury list?

A. Yes.

Q. In your own district, which comprised the north side of the river except Greenville?

A. That is correct.

Q. State whether you eliminated any person from the list because of his race?

A. None at all.

#### DEFENDANTS OBJECT. OVERRULED.

Q. State whether you eliminated any person's name from the list for any reason other than lack of moral character and sufficient intelligence to serve on a jury?

A. I did not.

Q. When that list of yours and the other four members of the Board were submitted to the county commissioners you say the full board went over each list again?

A. That's right.

Q. And adopted it?

A. That's right.

Q. That was the first Monday in July?

A. I think so.

Q. At the time the jury list was adopted and scrolls made

accordingly at the meeting of the full board was any person eliminated therefrom because of race?

DEFENDANTS OBJECT.

A. No.

OBJECTION OVERRULED. EXCEPTION BY DEFENDANTS.

Q. Were any names eliminated at the meeting of the full board which adopted the action of the commissioners for their districts for any reasons other than lack of moral character and sufficient intelligence to serve on a jury?

A. No.

Q. Was anything on the list to indicate or designate whether the person was white or colored?

DEFENDANTS OBJECT. OVERRULED. EXCEPTION.

A. There was not.

Q. BY THE COURT: When you caused the scrolls to be put in the jury box was anything on the scrolls indicating whether or not the name of the person on the scroll was white or colored?

A. There was not.

Q. Was anything said about that?

A. No, sir.

DEFENDANTS OBJECT. OVERRULED. EXCEPTION.

Q. Hand you a slip that was taken from jury box No. 2, on which appears the name of G. W. Roebuck, Carolina Township. Do you know Mr. Roebuck personally?

A. I do.

Q. There is a red mark on there. Does that have any significance?

A. None whatever that I know of.



DEFENDANTS OBJECT. OVERRULED.

Q. BY THE COURT: Do you know how it came to be there?

A. No, sir, I do not.

Q. State whether or not along about that time you were having trouble with your eyes?

A. I was.

Q. Did you use a red pencil in checking this list?

DEFENDANTS OBJECT. OVERRULED. EXCEPTION.

A. I may have used a red pencil on it for the purpose of checking some that would go in or not. It has no significance whatever.

Q. BY THE COURT: You said your board caused these scrolls to be put in the jury box?

A. Yes, sir.

Q. Approximately the same size scrolls?

A. Yes, sir, these lists were clipped.

G. H. PITTMAN (State Transcript) TESTIFIED AS FOLLOWS:

#### DIRECT EXAMINATION

Q. Are you a member of the board of commissioners of Pitt County?

A. Yes.

Q. Were you in July 1947?

A. Yes.

Q. I ask you if the board of county commissioners had the Clerk to the board to make up a jury list from the registration books, tax returns and other information available in June 1947?

A. Yes.

Q. What then did you do about selecting the available members?

A. I looked over the list in my district, Faulkland, Fountain, Beaver Dam and Farmville.

- Q. What action did you take on that at your July meeting?
- A. We went over the list and looked over the names. You see there were several in the box that were dead and of course we got them out, and where there was any duplication, that was all.
- Q. Did you eliminate anybody on account of race?

DEFENDANTS OBJECT. OVERRULED. EXCEPTION.

- A. No, sir.
- Q. Could you tell from the list prepared whether the name represented a white or colored person; was there any indication on that list to show whether or not the name represented a colored person or a white person?
- A. No, sir.
- Q. In the scrolls that were made and put in the jury box was there any mark on the scroll to show whether they represented a white or a colored person?
- A. No.
- Q. Was there any discussion at your meeting either in June or July as to whether or not certain people were colored or white?
- A. No, sir, there was not.
- Q. Did you exclude anybody from that list except the ones that did not have sufficient intelligence or wasn't of good moral character, or such names as were duplicated on the list?
- A. No.
- Q. I hand you scroll taken from box No. 2 "Alford H. Lewis, Farmville Township"—it has a little red mark at the end of the scroll. Do you know why that mark is there?
- A. No, I don't know anything about it. I don't know whether he is white or colored.
- Q. Did that mark signify to you whether this man is white or colored?
- A. No, sir, I don't know anything about the mark.
- Q. Does it have any significance at all so far as you are concerned?

A. No, sir, not a thing.

Q. I hand you two scrolls taken from jury box No. 1., one bearing the name of "Mrs. C. W. Gaynor, Fountain Township," the other "C. W. Gaynor, Fountain Township", which appears to have a red mark across the name.

A. I know both of them.

Q. Do you know why that mark is on there?

A. No.

Q. Does it have any significance to you at all?

A. No, sir, not a thing.

Q. Does it indicate to you whether these people are white or colored?

A. No, sir, I know them both; they are both white, and live just beyond where I live.

Q. BY THE COURT: Are they people of good moral character?

A. Yes, sir.

Q. Sufficient intelligence to serve on a jury?

A. Yes, sir, I think so. His wife is a school teacher and he is alright; I have never heard anything against him.

Q. He is one of the prominent people of the county?

A. Yes, sir, K. R. Wooten's nephew.

NORTH CAROLINA  
PITT COUNTY

SUPERIOR COURT  
MAY-JUNE TERM, 1949

STATE OF NORTH CAROLINA

VS.

BENNIE DANIELS and  
LLOYD RAY DANIELS

FINDINGS OF FACT AND RULING UPON  
MOTION TO QUASH and CHALLENGE TO  
ARRAY OF JURORS.

This case having been duly and regularly calendared for trial, and coming on for trial, at the May 30th, 1949, term of the Superior Court of Pitt County, North Carolina, before the under-signed Judge presiding, duly assigned by rotation to conduct said court, and upon the calling thereof the Sheriff of Pitt County produced the defendants before the Court, when and where the defendants and their counsel, C. J. Gates, Esq. and Herman L. Taylor, Esq., presented and offered to the Court a motion to quash the Bill of Indictment, and challenge to the array of petit jurors, upon the grounds stated in said motion; and the Court proceeded to hear evidence bearing thereon as set out in the record, the said motion being duly signed and verified by each of the defendants, Bennie Daniels and Lloyd Ray Daniels, and signed by their counsel; and after hearing the evidence thereon, and inspection of the records and documents offered in evidence before the Court, the Court finds:

1. That at the March 1949 term of the Superior Court of Pitt County, North Carolina, the defendants were charged upon a Bill of Indictment reading as follows:

"STATE OF NORTH CAROLINA March Term, 1949  
PITT COUNTY" SUPERIOR COURT

The jurors for the State upon their oath do present,  
That Bennie Daniels and Lloyd Ray Daniels, late of  
Pitt County on the 5th day of February, A.D. 1949,

with force and arms, at and in the said County, feloniously, willfully, premeditatedly and deliberately, and of his malice aforethought, did kill and murder William Benjamin O'Neal, contrary to the form and the statute in such case made and provided, and against the peace and dignity of the State.

Wm. J. Bundy,

Solicitor."

which aforesaid Bill of Indictment was sent before the Grand Jury for said term; and, after hearing evidence and examining witnesses thereon, the Grand Jury in open court, in a body, returned the said Bill, and found the same "To Be A True Bill" as will appear from the Minutes of this court, in Minute Book, No. 27 at page 133. That thereupon, upon suggestion that the defendants were charged with the crime of murder in the first degree, a capital offense under the laws of North Carolina, and were without counsel and were financially unable to provide counsel, the Court duly assigned and appointed Hon. Arthur B. Corey and Hon. W. W. Speight, members of the Bar, in good standing, residing in, and engaged in the practice of law before the courts of Pitt County, to represent said defendants; and subsequently thereto the defendants represented by counsel assigned to them appeared before the court and were duly and properly arraigned upon the Bill of Indictment returned by the Grand Jury as aforesaid, and, upon their arraignment, each entered a plea of "Not Guilty" and for their trial placed themselves upon God and their country; that thereupon, upon motion of counsel for defendants, the trial of defendants was continued until the next succeeding term of this court, and the defendants were committed to the care and custody of the State Hospital for insane negro persons at Goldsboro, North Carolina, and to I. C. Long, M.D., Superintendent of the State Hospital and an expert psychiatrist, for the purpose of examining into and study of their mental condition, under order of His Honor R. Hunt Parker, Judge presiding at said term.



2. That subsequent thereto, and at the regular April Term 1949 of the Superior Court of this County, this case was called, and it appearing to the Court that the Superintendent of said hospital had not completed his examination as to the mental condition of the defendants, and still held them under commitment heretofore made by the Court, upon motion of counsel for the defendants the trial of the cause was continued until the next succeeding term of this court for the trial of criminal cases, scheduled to convene on the 30th day of May 1949. That at said April Term of this court the defendants had employed to represent them in the investigation and trial of this case as attorneys at law C. G. Gates, Esq. and Herman L. Taylor, Esq., members of the Bar in Wake and Durham Counties, North Carolina, in good standing. That thereupon, the aforesaid counsel having accepted employment to represent the said defendants in this case, the counsel heretofore assigned by the Court were discharged by the Court, and the case continued until the May 30th 1949 term, as aforesaid. That on the 24th day of May, 1949, the defendants were returned to the custody of the Sheriff of this County, with a report from I. C. Long, M.D., Superintendent of the State Hospital for negro insane persons, at Goldsboro, N. C., setting forth that each of the defendants has sufficient intelligence to know right from wrong, and is able to stand trial upon the Bill of Indictment heretofore returned by the Grand Jury in this case.

3. That this case was duly and regularly calendared for trial at this term of court convening on the 30th day of May 1949, as aforesaid. That upon calling the case for trial as above set out, the defendants presented a motion to quash the indictment and challenge to the array of petit jurors, as set out in the record, the defendants stating in open court through their counsel that the challenge was on the grounds set out in the motion as to the method of operation of the administration machinery provided for the selection of jurors, and that they made no objection to the method, prescribed by the statutes of this State as contained in Chapter 9, articles 1, 2, 3, 4 and 5, and sections

thereunder, of the General Statutes of North Carolina, enacted by the General Assembly of said State at its session held in 1943, and amendments thereto particularly the amendment contained in the supplement to said General Statutes, as set out in Chapter 1007, Section 1, of the laws of the General Assembly of North Carolina enacted at its session of 1947:

4. The Court further finds as a fact that, as set forth in Chapter 9, article 1, section 1, of said General Statutes and amendments thereto, above referred to, the qualifications of jurors and manner of selecting the list of jurors are set forth in Chapter 9, article 1, as amended, reading as follows:

“Art. 1. JURY LIST AND DRAWING OF ORIGINAL PANEL.

9-1 Jury list from taxpayers of good character.

The board of county commissioners for the several counties, at their regular meetings on the first Monday in June in the year 1947, or the jury commissions or such other legally constituted body as may in the respective counties be charged by law with the duty of drawing names of persons for jury service, at the times of their regular meetings, and every two years thereafter, shall cause said clerks to lay before them the tax returns for the preceding year for their county and a list of names of persons who do not appear upon the tax lists, who are residents of the county and over twenty-one years of age, from which lists the board of county commissioners or such jury commissions shall select the names of such persons who reside in the county who are of good moral character and have sufficient intelligence to serve as members of grand and petit juries. A list of the names thus selected by the board of county commissioners or such jury commissions shall be made out by the clerk of the board of county commissioners or such jury commissions and shall constitute the jury list of the county and shall be preserved as such.

The clerk of the board of county commissioners or such jury commissions, in making out the list of names to be

laid before the board of county commissioners or such jury commissions, may secure said lists from such sources of information as deemed reliable which will provide the names of persons of the county above twenty-one years of age residing within the county qualified for jury duty. There shall be excluded from said lists all those persons who have been convicted of any crime involving moral turpitude or who have been adjudged non compos mentis."

5. That prior to 1947 no negro has served on the grand jury in the Superior Court of Pitt County in more than twenty (20) years.

6. That prior to 1947 members of the negro race were occasionally called, summoned and served for the jury duty.

And, it appearing to the Court that, as stated in the opinion of the Supreme Court of the United States by Mr. Justice Black, in the case of *Patton v. State of Miss.*, 332 U.S. 463 at 466: "Whether there has been systematic racial discrimination by administrative officials in the selection of jurors is a question to be determined from the facts in each particular case."

The standard or rule for determination of whether or not there exists discrimination in the selection of jurors is set out by the Supreme Court of the United States in *Akins v. State of Texas*, 325 U.S. 398, at page 403 and 404 and to the bottom of page 405 citing with approval *Hill v. Texas*, 316 U.S. 404—in the *Akins* case.

7. That in 1947 the jury boxes of Pitt County Superior Court were purged, and all names of jurors therein removed therefrom and the scrolls containing the names destroyed; and the board of county commissioners of Pitt County proceeded to select a list of persons qualified for jury service in said county, and, at their regular meeting on the first Monday in June 1947, caused the clerk of said board to lay before them the tax returns for the preceding year for Pitt County and a list of the names of persons who do not appear upon the tax list, who are residents of the county over twenty-one years of age from which lists

the said board of county commissioners proceeded to select the names of such persons who reside in the County, who are of good moral character and who have sufficient intelligence to serve as members of grand and petit juries, and caused a list of the names thus selected by the Board of county commissioners to be made out by the clerk of said board of county commissioners, which said list of persons so qualified was adopted by them as the jury list of said Pitt County and was preserved as such, and this jury list offered in evidence before the Court; that upon an inspection of the jury list offered in evidence, it shows that there is no mark thereupon identifying the name of any person on said list except the township in which they reside. That there is nothing on said list identifying any person, whose name appears thereon, as being of either the white or the negro race, and nothing on said list indicating whether any person was of the white or negro race, and nothing to identify such person as a member of either race.

8. That the said board of commissioners consists of five members, one member being selected from each of five districts within the county, and elected by the qualified voters of the county, each district comprising an area representing a combination of townships, and that upon said list of persons being laid before said board, a list of the persons residing within the area represented by each member of the board of commissioners, was submitted to and carefully screened and examined by the member of the board representing that area.

9. That in screening and making an examination of the list of said persons to ascertain and determine their qualifications as jurors, the members of said board called upon, and received assistance from, and consulted with, persons in their township who were familiar with and know the citizenship thereof and make an honest, careful investigation to determine whether or not such persons possessed the qualifications to serve as a juror, and possessed the qualifications required by the statutes of this State to serve upon juries in Pitt County, rejecting and



eliminating therefrom the names of those persons whom they found to be disqualified, or who did not possess the qualifications required by the statutes, as aforesaid.

10. That in so doing, no person was excluded, or rejected, from said list because of race or color, and that in the consideration of said list no discussion or consideration was given to the fact that any particular person was either a member of the white or negro race, but that only such persons were rejected as did not possess the qualifications for jury service required by the laws of this State, as set out in General Statutes, Chapter 9, section 1, et seq., above referred to.

11. That, after checking, examining and screening the list of persons by each member of said board of county commissioners who lived in the district represented by him, in which said persons resided, at a meetings of said board of county commissioners on the first Monday in July 1947, the aforesaid lists were all submitted to and examined by the said board of county commissioners of Pitt County, to ascertain and determine the persons thereon who possessed the qualifications to serve as jurors in said county, as set out in the said statutes. That in so doing the said board of county commissioners did not reject any person on account of race or color, and no negro was rejected because of his race. That the only persons rejected were those whom the board of county commissioners found to be not qualified to serve as jurors.

12. That the list considered by said board of county commissioners at its meeting in July 1947 contained the names of persons over twenty-one years of age residing in the county as set out upon the tax list; and those whose names did not appear in the tax list secured from reliable sources of information likely to provide the names of persons qualified for jury duty. That amongst the list so considered were the registration and poll books containing a list of the qualified voters of said county, being persons over twenty-one years of age residing therein.

13. That at said July 1947 meeting, the said board of county commissioners of Pitt County, in considering per-



sons now on said list, selected therefrom for jury service persons possessing the qualifications set out in the statutes aforesaid and did not reject any person on account of color or race, and that no negro was rejected on account of his race, the race to which any person belonged not being discussed, or considered, in passing upon the qualifications of said persons to act as jurors, and made a list of the names of the persons who were qualified therefor, and duly approved and adopted such as the Jury List of the county.

14. That said board of county commissioners caused the names upon the jury list adopted, as set out above, to be copies on small scrolls of paper of equal size, and put into a box procured for that purpose, having two divisions marked No. 1 and No. 2, and fastened by two locks, the key of one delivered to the Sheriff of Pitt County, and the key to the other delivered to the Chairman of the Board of County Commissioners, and the jury box delivered to the Clerk of said Board; and that the aforesaid keys and jury boxes have been constantly and continuously in the possession of the aforesaid officers since said date.

15. That upon the scrolls put into said boxes, containing the names of persons selected, as set out herein, there were no marks of identification except that indicating the residence of the juror, or township in which he resides; that there was nothing on the jury list or on the scroll to indicate whether such person was a person of the white or negro race.

16. That, at the request of the defendants, the jury boxes for the county were produced in open court; and the scrolls in Box No. 1 were produced in open court and the scrolls in Box No. 1 were examined and inspected, and that there was nothing on any scroll in said box indicating or identifying the race to which the juror, whose name appeared thereon belonged. That in Jury Box No. 1 were found twelve scrolls, eight of which were marked with red pencil marks at the end of the name of the person appearing thereon, and four scrolls with red pencil marks

through the names of persons appearing thereon; and in Jury Box No. 2 seventeen scrolls with red marks appearing at the end of the person's name thereon; and four scrolls with a red pencil mark through the names thereon with the pencil marks appearing to have been erased thereon. That in copying the list, in preparing the scrolls to put in said Jury Boxes, the said lists were made upon ordinary typewriting paper, containing two columns of names to the sheet, the name of each person thereon typewritten opposite the name of another person in the parallel column. That in checking or examining the aforesaid list the names of persons rejected were marked through with a red pencil; and that in each of these instances the red pencil mark through the name of the person rejected extended to and upon the end of the scroll containing the name of the person written opposite in the parallel column, and that said marks did not identify whether said person was a member of the negro or white race and was, and is of no significance. That the red marks on the ends of eight scrolls appearing in Jury Box No. 2, were marked by Commissioner Smith in the consideration of the jury list by the Board of County Commissioners at its meeting in July 1947. That another scroll considered by the board at that time contained the name of the mother of the Commissioner and that her name was marked through and the name of H. E. Smith, a brother of the commissioner's substituted therefor, and that said Smith was found to be qualified by said board and his name written on the scroll in pencil. That a scroll with the name "James Ray Pittman, Ayden, N. C." on it, had the address "Ayden" marked through with a pencil and the address "Greenville, N. C." substituted, said juror residing in Greenville; and that the marks on the other scrolls were corrections of the place of residence and address of the persons whose names appeared thereon. That one scroll contained the name of Mrs. Thelma P. Edwards, who afterwards married a Mr. Rouse, and the name of "Edwards" was marked through and the name of "Rouse" was written above it. That a scroll containing the name of Mrs. Wesley Harvey was

written above the name "Miss Eure", who in July 1947 lived in Ayden, and since then married a Mr. Wesley Harvey, and now lives in Greenville. That the scroll containing the name of Mrs. D. D. Manning, Ayden has "Ayden" marked through, and underneath written "Grimesland". That her correct address is Grimesland.

16. The jury boxes containing the scrolls of names of persons selected for jury duty having been produced in open court, opened, and, under supervision of the Court, inspected and examined by counsel for the defendants and the State, and the said scrolls therein bearing no symbol or means of identification indicating to which race any person whose name appeared thereon belonged, and no evidence was presented, or offered, as to what part or portion of the said scrolls were of the white or of the negro race, and no evidence of the ratio either race bore to the other race in the names on said scrolls, the Court finds that there is no exclusion of any negro from said scrolls by reason of race or color as now in the jury boxes of Pitt County.

17. That the tax list for Pitt County for the year 1946 contained names of 15,517 persons, of which 10,344 were white and 5,173 were negro tax payers. That the registration and poll books of 1946, containing a list of persons over twenty-one years of age residing in the county, who were qualified voters, contained the names of 20,065 white persons and 423 negro persons, a large majority being a duplication of names appearing in the tax lists of the county.

18. That it is admitted by the defendants and the State that the jury boxes for the county presented before the Court contained the names of approximately 10,000 persons of both the white and negro race, from the jury list adopted by the board of county commissioners of Pitt County.

19. That the United States Census for 1940 discloses that the total population of Pitt County to be 61,244 of which 32,151 belong to the white and 29,086 to the negro race, and 1 of a foreign race; and that of said persons over

twenty-one years of age 17,323 are of the white race and 13,762 are of the negro race, and 1 of another race, as appears in Table 22 of said census.

20. That a regular term of Superior Court of Pitt County was scheduled by Statute to be held, and did convene on Monday, August 30, 1948, which term of court was duly and regularly held. That twenty days prior thereto, the board of county commissioners of Pitt County caused to be produced before their board, by the clerk, the Jury Boxes of the county and to be drawn from said Jury Box, out of the partition marked No. 1 by a child of less than ten years of age, 64 scrolls, the said term of court being for the trial of criminal and civil cases. That persons whose names were inscribed upon said scrolls were drawn to serve as jurors at said term of the Superior Court, and when so drawn and the names thereon listed, the scrolls were put in Jury Box No. 2. That the persons whose names appeared on said scrolls, drawn as aforesaid, and no others, were duly summoned by the Sheriff to appear and except such as were sick, dead, or moved out of the county, did appear as a panel of jurors for the August 1948 term of said court. That the panel of jurors so drawn consisted of Mr. C. L. Bowen and 63 others, constituting the panel of jurors for said court.

21. That at the regular term of the Superior Court for Pitt County, provided by law, convened to be and was, held on Monday the 24th day of January, 1949. That twenty days prior to the convening of said court, on the 24th day of January, 1949, said Board of commissioners of Pitt County, North Carolina, caused a panel of jurors to be drawn for said term as follows: Said Board of County Commissioners caused to be produced before their board, by the clerk, the jury boxes of the county, and to be drawn from the jury Box out of the partition marked No. 1, by a child less than 10 years of age, 77 scrolls, the said term of court being for the trial of criminal and civil cases. That the persons whose names were inscribed on said scrolls were drawn to serve as jurors at said term of Superior Court, and when so drawn and the names thereon listed,



the scrolls were put in the jury box partition No. 2. That the persons whose names appeared on said scrolls as aforesaid, and no others, were duly summoned by the Sheriff to appear and did appear as a panel of jurors for the January 1949 term of said court, except such as were dead, sick or moved out of the county. That the panel of jurors so drawn consisted of Mr. L. R. Jackson and 76 others, constituting the panel of jurors for said term.

22. That the Clerk of the Board of county commissioners, within five days from the drawing of said panel of jurors for August 1948 term of Superior Court, and within five days from the drawing of the panel of jurors for the January 1949 term of Superior Court, delivered to the Sheriff of Pitt County a list of the jurors so drawn, and that the said Sheriff summoned the persons therein named, and no others, to attend as jurors at said court, except such as were dead, sick or out of the county, as provided by statute.

23. That in said drawings of the panel of jurors for the aforesaid August 1948 and January 1949 terms of this court, the scrolls containing the names of persons drawn who were dead, removed out of the County, or otherwise disqualified to serve, were discarded and destroyed and other persons drawn in their stead, as provided by General Statute 9.

24. That in the drawing of jurors since the revision of the jury list in July 1947, the drawing of scrolls out of partition marked No. 1 and putting them into partition marked No. 2, has continued, and that the scrolls in partition No. 1 have not been exhausted or all drawn therefrom.

25. That the manner and method of drawing grand jurors for the Superior Court of Pitt County is regulated by statute as set out in Chapter 812, of the laws of the General Assembly of North Carolina enacted at its session held in 1945, as follows:

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## "Chapter 812

AN ACT TO REGULATE THE GRAND JURY  
OF PITT COUNTY.

The General Assembly of North Carolina do enact:

Sec. 1. That at the first term of court for the trial of criminal cases in Pitt County after the first day of July one thousand nine hundred and forty-five, there shall be chosen a grand jury as now provided by law, and the first nine members of said jury chosen at said term shall serve for a term of one year and the second nine members of said jury so chosen shall serve for a term of six months, and thereafter at the first term of criminal court after the first days of January and July of each year that there shall be chosen nine members of said grand jury to serve for a term of one year.

Sec. 2. That all laws and clauses of laws in conflict with the provisions of this Act are hereby repealed.

Sec. 3. That this Act shall be in force from and after its ratification.

Ratified this the 19th day of March 1945."

26. That upon the convening of the regular August 1948 term of the Superior Court of Pitt County for the trial of criminal cases, the same being the first term of said court held and convened after the first day of July 1948, the Judge presiding over that term of court directed the names of all persons who had been summoned and returned as jurors from the panel selected for said term, to be written on separate scrolls of paper, and put into a hat, and drawn out, one at a time, by a child under ten years of age, that the first nine members of the panel whose names appeared upon the scrolls drawn from the hat were selected, duly sworn and empanelled, with the nine members theretofore selected in the same manner at the January 1947 term of the said Superior Court, constituted the grand jury for said August Term 1948 of the Superior Court of Pitt County.

27. That said grand jury continued to serve until the January 1949 term of the Superior Court of Pitt County,

and at said January 1949 term of Superior Court of Pitt County, it being the first term of criminal court convened and held after the first day of January 1949, the Judge presiding over said term of Superior Court directed that the names of all persons returned as a panel of jurors drawn for said term, to be written on separate scrolls of paper and put into a hat and drawn out one at a time, by a child under ten years of age, and the first nine persons drawn consisting of Mr. L. R. Jackson and 8 others, were chosen as members of the grand jury for a term of one year, and, with the remaining 9 members theretofore chosen at the August 1948 term of said Superior Court, constitute the grand jury for the said January 1949 term of said Superior Court and terms succeeding and including the term of March 1949.

28. That there was no member of the negro race drawn on this grand jury. That there were members of the negro race whose names were in the jury box of the County when the panel from which said grand jury was chosen was drawn as aforesaid.

29. That since the jury list was revised and new scrolls put in the jury boxes of Pitt County in July 1947, a marked change has occurred in the frequency with which members of the negro race have been drawn and called upon panels for petit jury duty, and from time to time, in the drawings of panels of jurors since that date, members of the negro race have been drawn for jury duty at practically every term of the Superior Court, although no negro was drawn from the panel of jurors whereon he served, and chosen for the grand jury.

30. That in the drawing of the special venire of 150, ordered by the Court in the trial of this case to supplement the panel of regular jurors in the selection of the jury, the said panel of regular jurors having been exhausted, as set out in the order made in this case, of the 150 names drawn there were five members of the negro race; that of said five negro persons, two have died since their names were put in the jury box in 1947; and one had removed out of the county since said date, and two were summoned

and reported for duty, out of the 89 persons found and summoned by the Sheriff for service on said special venire. That of the two negro persons reporting for jury duty, one disqualified herself by disclosing that she had conscientious scruples against capital punishment, and the other negro juror was accepted, qualified and is seated upon the jury selected for the trial of this case.

31. That most all of the persons testifying with respect to the constitution of the jury in Pitt County Superior Court heretofore, testified that they had heretofore never been drawn, and one of these persons was drawn, as a member of the said special venire, from the jury box; that others testifying has been in court from time to time for only short periods, at different terms, and observed the proceedings of the court for only brief intervals. That it is a fact of common knowledge, of which the Court takes judicial notice, that the entire panel of jurors drawn for any term, is rarely, if ever, seated in the jury box in trying the case with which the court is engaged. That other persons testifying to the effect that they had not been drawn for jury service, also testified that they were following occupations which exempted them from service as jurors, as provided in Chapter 9, section 19 of the General Statutes of North Carolina, to-wit, "Ministers of the Gospel, physicians, funeral directors and embalmers."

32. That a second special venire, to supplement the panel of jurors from which to select the jurors to try this case consisted of 35 drawn from the jury box in open court in the presence of the defendants and their counsel, of whom 17 were found and served by the Sheriff and reported for duty; and amongst those was a witness, a negro, who had theretofore testified that he had never been drawn for jury duty, and promptly disqualified himself and claimed exemption because he was a funeral director and embalmer.

33. That of the second venire ordered for the selection of a jury in this case two members thereof were members of the negro race; that no person was excluded therefrom by reason of race or color.

34. THE COURT FURTHER FINDS AS A FACT that in the consideration of qualifications of person or persons selected for jury duty, and in determining whether or not the persons selected whose names were put on the jury list of Pitt County, ascertained to be and were qualified or possessed the qualifications for jurors as prescribed by the statutes of this State, there was no discussion or consideration as to whether or not the person named was a member of the white or negro race by said board of county commissioners; and that in selecting the persons qualified for jury service from the jury list adopted at its meeting in July 1947, the said Board of Commissioners did not intentionally, carelessly, negligently, unintentionally, or otherwise, exclude from the jury list, or scrolls placed in said box, the name of any person or persons by reason of race or color, and that no person was rejected because he or she was a member of the negro race. That in the selection of the grand jury, and petit jury panel, and two special venires, no member of the negro race was excluded therefrom because of race or color. That in the drawing of both special venires ordered in this case, the jury boxes for the county were produced in open court by the Clerk of the board of County Commissioners, and the scrolls containing the name of jurors were drawn therefrom in open court, under the direction of the presiding Judge in the presence of the defendants and their counsel, and were drawn from the box by the consent of counsel for the defendants, no objection thereto having been made by the defendants.

35. The burden of proof of establishing facts upon which the motions presented by the defendants are based is upon the defendants. They have not shown that any negro, who was otherwise qualified for jury service under the statutes of North Carolina, herein referred to, has been excluded for jury service by reason of race or color, and have not proved that when the Board of county commissioners for Pitt County revised the jury list and scrolls in 1947, pursuant to said statutes, said board failed in any respect to perform its full duty as prescribed by the law of this State, and have failed to show that any negro has



been excluded from jury service by reason of race or color.

36. THAT THIS COURT FINDS whatever may have been the status or condition of the jury list and scrolls in the jury boxes of Pitt County prior to 1947, since that date in the revision of said list or scrolls of said boxes made on that date, no person has been excluded therefrom because of race or color, and that the defendants in this case are not prejudiced in any respect by reason of the constitution of the jury list and scrolls as fixed at that time, or the way and manner in which said jury panels and grand jury were qualified and drawn.

37. The Court finds that the General Statutes of North Carolina 1943, Chapter 9, as amended in 1947, providing and controlling the method for the selection of jury lists and scrolls, and setting forth the qualifications of jurors drawn for service on the petit juries, grand juries and special venires, have been strictly complied with, and that there has been no exclusion of negroes from service upon such juries since July 1947, and that the panel of regular jurors for the August 1947, January 1948, August 1948, January 1949, and May 1949, terms of this court, and each of the two special venires ordered in this case, were all drawn and selected from, and the jury list and scrolls containing names of qualified jurors chosen and selected, strictly in accordance with the provisions of said statutes, and that since said July 1947, there was, has been, and is no discrimination against the negro race, and that no negro has been or is excluded therefrom on account of race or color.

38. The Court finds that the failure to draw the name of any negro from the jury box in the panel of jurors drawn for the August 1948 and January 1949 term of this court, and failure to draw from said jury panels the name of any negro for service upon the grand jury, as constituted from said jury panels, was, and is, not a continuation of any practice or exclusion of a negro on account of race theretofore existing, whatever it may have been prior to July 1947, when the jury list and scrolls were revised and newly created, and that the failure to draw the name of any



negro jurors on said jury panels, and select any negro therefrom for a grand juror, was not due to the exclusion of any negro on account of race or color from jury service.

THEREFORE, upon motion of Hon. William J. Bundy, Solicitor for the State, IT IS CONSIDERED, ORDERED AND ADJUDGED that this motion to quash the Bill of Indictment and this challenge to the array of jurors, be, and the same is hereby denied and dismissed.

Clawson, L. Williams,

Judge presiding.

To the foregoing the defendants  
object and except thereto.

EXCEPTION NO.....

## STATUTES.

## Chapter 15, General Statutes of North Carolina:

§ 15-41. *When officer may arrest without warrant.*—Every sheriff, coroner, constable, officer of police, or other officer, entrusted with the care and preservation of the public peace, who shall know or have reasonable ground to believe that any felony has been committed, or that any dangerous wound has been given, and shall have reasonable ground to believe that any particular person is guilty, and shall apprehend that such person may escape, if not immediately arrested, shall arrest him without warrant, and may summon all bystanders to aid in such arrest."

"15-42. *Sheriffs and deputies granted power to arrest felons anywhere in state.*—When a felony is committed in any county in this State, and upon the commission of the felony, the person or persons charged therewith flees or flee the county, the sheriff of the county in which the crime was committed, and/or his bonded deputy or deputies, either with or without process, is hereby given authority to pursue the person or persons so charged, whether in sight or not, and apprehend and arrest him or them anywhere in the State.

## Chapter 7, General Statutes of North Carolina:

§ 7-63. *Original jurisdiction.*—The superior Court has original jurisdiction of all civil actions whereof exclusive original jurisdiction is not given to some other court; and of all criminal actions in which the punishment may exceed a fine of fifty dollars, or imprisonment for thirty days; and of all such affrays as shall be committed within one mile of the place where, and during the time, such court is being held; and of all offenses whereof exclusive original jurisdiction is given to justices of the peace, if some justice of the peace shall not within twelve months after the commission of the offense proceed to take official cognizance thereof.

## Chapter 14, General Statutes of North Carolina:

§ 14-17. *Murder in the first and second degree defined; punishment.*—A murder which shall be perpetrated by means of poison, lying in wait, imprisonment, starving, torture, or by any other kind of willful, deliberate and premeditated killing, or which shall be committed in the perpetration or attempt to perpetrate any arson, rape, robbery, burglary or other felony, shall be deemed to be murder in the first degree and shall be punished with death. All other kinds of murder shall be deemed murder in the second degree, and shall be punished with imprisonment of not less than two nor more than thirty years in the state prison.

§ 1-279. *When appeal taken, stay of execution.*—The appeal must be taken from a judgment rendered out of term within 10 days after notice thereof, and from a judgment rendered in term within 10 days after its rendition, unless the record shows an appeal taken at the trial, which is sufficient, but execution shall not be suspended until the giving by the appellant of the undertakings hereinafter required.

§ 1-282. *Case on appeal; statement, service, and return.*—The appellant shall cause to be prepared a concise statement of the case, embodying the instructions of the judge as signed by him, if there be an exception thereto, and the request of the counsel of the parties for instructions. If there be any exceptions on account of the granting or withholding thereof, and stating separately, in articles numbered, the errors alleged. A copy of this statement shall be served on the respondent within 15 days from the entry of the appeal taken; within 10 days after such service the respondent shall return a copy with his approval or specific amendments indorsed or attached; if the case be approved by the respondent, it shall be filed with the clerk as a part of the record; if not returned with objections within the time prescribed, it shall be deemed approved: Provided, that the judge trying the case shall have the power, in the exercise of his discretion, to enlarge the time in which to serve statement of case on appeal and exceptions thereto or counter statement of case.

[fols. 172-181] IN UNITED STATES COURT OF APPEALS FOR THE  
FOURTH CIRCUIT

No. 6330

BENNIE DANIELS and LLOYD RAY DANIELS, Appellants,

versus

ROBERT A. ALLEN, Warden, Central Prison of the State of  
North Carolina, Raleigh, North Carolina, Appellee

Appeal from the United States District Court for the  
Eastern District of North Carolina, at Raleigh

OPINION—Filed November 5, 1951

(Argued October 12, 1951. Decided November 5, 1951)

Before Parker, Soper and Dobie, Circuit Judges

O. John Rogge (Rogge, Fabricant, Gordon & Goldman,  
Herman L. Taylor and Murray A. Gordon on brief) for  
Appellant, and Ralph Moody, Assistant Attorney General  
of North Carolina (Harry McMullen, Attorney General of  
North Carolina, on brief) for Appellee.

[fol. 182] PARKER, Circuit Judge:

This is an appeal from an order vacating a writ of habeas corpus and dismissing the petition for the writ. Appellants were indicted in a North Carolina state court for the crime of murder and were convicted by a jury of murder in the first degree. The jury did not recommend mercy in the case and petitioners were sentenced to death. They appealed to the state Supreme Court, which affirmed the conviction, and then applied to the Supreme Court of the United States for a writ of certiorari, which was denied. Two applications for leave to file petitions for writs of error coram nobis were filed before the Supreme Court of North Carolina and were denied by that court. After all these proceedings were had, a petition for habeas corpus was filed in the court below on grounds which had been raised before the state court in the trial of the case. A full hearing was given appellants by the

District Judge, who after finding the facts held that there was no merit in the grounds urged by appellants and also that they had not shown themselves entitled to the writ in view of the procedural history of the case. The last ground is the only one that we need consider.

This is not a case where facts alleged to invalidate action of a state court were discovered after trial, or where the defendants were without counsel to protect their rights during trial. They were represented on the trial by counsel of their own choosing, who took the place of counsel who had been earlier appointed by the court to represent them; and these counsel of their choice raised; offered evidence to support and had the trial court pass upon the very points urged in the petition for habeas corpus, viz. that Negroes were discriminated against in the selection of the grand and petit juries by which appellants had been indicted and tried and that confessions offered in evidence against appellants were [fol. 183] not voluntary. The trial court, after a full hearing, decided these questions against appellants, exceptions to the rulings were noted, and after conviction and sentence an appeal to the Supreme Court of the state was duly taken and counsel obtained from the trial judge an extension allowing 60 days for serving case on appeal. The case on appeal was not served within the 60 days allowed, but counsel attempted to serve it one day after the expiration of that period. The trial judge struck it from the record because not served within time, and appellants attempted to bring it up as a part of the record by applying to the Supreme Court of the state for a writ of certiorari, which that court denied, *State v. Daniels*, 231 N. C. 17, 56 S. E. 2d 2. In denying the writ, the Supreme Court pointed out that appellants could apply to that court for permission to file in the trial court a petition for writ of error coram nobis to raise matters extraneous to the record; and application was made for such permission, which was denied on the ground that it "did not make a prima facie showing of substance". *State v. Daniels*, 231 N. C. 341, 56 S. E. 2d 646.

After the Supreme Court of North Carolina had denied appellants' petition for certiorari and for permission to apply for the writ of error coram nobis, it affirmed the judgment and sentence of the trial court and dismissed the ap-



peal. *State v. Daniels*, 231 N. C. 509, 57 S. E. 2d 653.\* Application was thereupon made to the Supreme Court of the [fol. 184] United States to review the action of the state court, petitioners attaching to their application a full report of the proceedings of the trial court and complaining because of the selection of the jury and the admission of the confessions as well as because the case on appeal had been stricken from the record. These questions were thoroughly discussed in the briefs filed in support of the petition for certiorari; but the Supreme Court denied the writ, calling attention in its memorandum order, not only to the decision of the Supreme Court of North Carolina affirming the judgment, but also to the decisions of that court denying the petition for certiorari to bring up the case on appeal and denying permission to file petition for writ of error coram nobis. *Daniels v. North Carolina*, 339 U. S. 954.

After denial of certiorari by the Supreme Court of the United States, appellants again applied to the Supreme Court of North Carolina for permission to file a petition for writ of error coram nobis in the trial court; but this was denied on the ground that the only matter presented by the petition had been passed upon by the trial court and had been presented to the Supreme Court of the United States

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\* That the Supreme Court of North Carolina was thoroughly cognizant, at the time, of the right of Negroes accused of crime to be tried by juries in the selection of which discrimination had not been practiced against Negroes and that it was alive to its duty to enforce the right, is shown by its action in granting two new trials to one Raleigh Speller, one in 1948 and the other in 1949, because the right had not been observed in his case. See *State v. Speller*, 229 N. C. 67, 47 S. E. 2d 537; *State v. Speller*, 230 N. C. 345, 53 S. E. 2d 294. It had before it the fact that the question had been raised in this case; for the record shows that the case on appeal which had been stricken by the trial judge was attached to the application made for certiorari to bring it up as a part of the record.

in the application to that court for certiorari. The Court said:

"The petitioners now again petition this Court for leave to file a petition in the Superior Court of Pitt County for a writ of error coram nobis; and incorporate in that petition substantially matters that were presented to the Supreme Court of the United States in their petition to that Court for certiorari. On the fact of the petition it appears that these are matters fully presented to the Court upon their trial and there passed upon.

"The function and limitations of the writ of error coram nobis were called to the attention of counsel for the petitioners when the petition for certiorari to bring up the case on appeal was dismissed in this Court. [fol. 185] *State v. Daniels*, 231 N. C. 17, 56 S. E. 2d 2, supra; and again in the subsequent decision dismissing the petition for leave to file a petition for such writ in the trial court. \* \* \*

"The writ of error coram nobis is not a substitute for appeal. Under our practice permission to petition the Superior Court in which the petitioning defendant was tried is given only when the matter on which the petition is based is 'extraneous to the record.' \* \* \*

"We understand that the petition for certiorari presented to the Supreme Court of the United States comprehended all matters which might be which the petitioners may now rely."

No application for certiorari was made to the Supreme Court of the United States to review this decision.

On these facts we think that the District Judge was clearly correct in holding that appellants were not entitled to the writ of habeas corpus. The question involved is not one of exhausting state remedies as a prerequisite to the writ,\*

\* U. S. ex rel., *Auld v. Warden of New Jersey State Penitentiary*, 3 Cir. 187 F. 2d 615, upon which appellants rely, deals with the exhaustion of state remedies as a prerequisite to habeas corpus and held the exceptional circumstances there to justify proceeding without exhausting them. It nevertheless affirmed the order of the District Court denying the writ of habeas corpus.

nor of the rights of one who through lack of counsel has failed to raise constitutional questions in the trial court, but of permitting persons who have been represented by counsel and who have had the trial court pass on the identical questions that they wish to raise by habeas corpus to use that writ in lieu of an appeal to review the action of the trial court on those questions. To permit this to be done would be, not only to permit the writ of habeas corpus to be used in lieu of appeal, but to permit one of the lower federal courts to review the decisions of a state court of coordinate [401.186] jurisdiction, instead of requiring that the orderly process of appeal to the Supreme Court of the state with application to the Supreme Court of the United States for certiorari be followed. It is no answer to this to say that appellants have lost their right to have the questions which they present reviewed by the Supreme Court of the state. The right of review was provided by state practice and was lost by failure to comply with the reasonable rules of the state court, which the federal courts have no power to waive or to nullify.

It is well settled that the writ of habeas corpus may not be used in lieu of an appeal to review the action of a trial court with respect to questions there raised and passed upon. *Woolsey v. Best*, 299 U. S. 1; *Goto v. Lane*, 265 U. S. 393; *Riddle v. Dyche*, 262 U. S. 333; *Glasgow v. Moyer*, 225 U. S. 420, 428; *Sanderlin v. Smyth*, 4 Cir. 138 F. 2d 729. And the rule is not different because the appellants or their counsel have allowed the time for serving the case on appeal to elapse and thus lost the right to have the questions reviewed by appeal. *Goto v. Lane*, supra; *Riddle v. Dyche*, supra. As said in *Goto v. Lane*, supra: "If the questions presented involved the application of constitutional principles, that alone did not alter the rule. *Markuson v. Boucher*, 175 U. S. 184. And, if the petitioners permitted the time within which a review on writ of error might be obtained to elapse and thereby lost the opportunity for such a review, that gave no right to resort to habeas corpus as a substitute."

It is argued that the allegation that constitutional rights of appellants were denied in the ruling of the state trial court is sufficient, of itself, to authorize the issuance of the writ of habeas corpus by the federal district court. The

answer is that release under habeas corpus of one convicted [fol. 187] by a state court can be had only if the action of the state court may be held void; and it would be absurd to say that the judgment of a court is rendered void because of an erroneous ruling. To justify such action, there must have been such a gross violation of constitutional rights as to deny the accused the substance of a fair trial in a situation where he was not in position to protect himself because of ignorance, duress or other reason for which he should not be held responsible. As this court said in *Eury v. Huff*, 4 Cir. 141 F. 2d 554, 555, "A prisoner does not show right to release on habeas corpus merely by showing error on his trial, even though this involve a violation of constitutional right. To entitle him to release on habeas corpus there must have been such 'gross violation of constitutional right as to deny [to the prisoner] the substance of a fair trial and thus oust the court of jurisdiction to impose sentence.'"

In *Markuson v. Boucher*, 175 U. S. 184, 185, the Supreme Court laid down the rule generally applicable as follows: "We have frequently pronounced against the review by habeas corpus of the judgments of the state courts in criminal cases, because some right under the Constitution of the United States was alleged to have been denied the person convicted, and have repeatedly decided the proper remedy was by writ of error." And in *Glasgow v. Moyer*, 225 U. S. 420, 429, the Supreme Court said: "The principle of the cases is the simple one that if a court has jurisdiction of the case the writ of habeas corpus cannot be employed to re-try the issues, whether of law, constitutional or other, or of fact."

In dealing with the question, with particular reference to the broad language in *Bowen v. Johnston*, 306 U. S. 19, upon which appellants here rely, the Court of Appeals of the Ninth Circuit, speaking through the late Judge Garrecht, [fol. 188] in *Graham v. Squier*, 9 Cir. 132 F. 2d 681, 683-684, said:

"The language of the emphasized clause in the excerpt from the *Bowen* case, considered in and of itself and isolated from the text of which it is a part, might seem to indicate, as petitioner would have it, that whenever any constitutional right is infringed in a criminal trial, the accused, if he be convicted, may thereafter nullify



the judgment by bringing a habeas corpus proceeding. But taking that clause, as is obviously necessary in order to arrive at the true meaning, in conjunction with the statements of the Supreme Court contained in the very same paragraph, and which express the unvaried rule that a criminal action may be collaterally attacked on *jurisdictional* grounds alone, one sees immediately that the Supreme Court intended no more than that the writ of habeas corpus should issue only in those cases where the denial of the constitutional rights of the accused operated to prevent the trial court from acquiring jurisdiction over the person of the accused, or if jurisdiction did exist at the commencement of the trial, operated to destroy that jurisdiction at some stage during the progress thereof. That this interpretation of the Supreme Court's language is correct will appear from an examination of the sustaining authorities, which are cited in the case immediately following the clause under discussion."

In *Sandarin v. Smyth*, 4 Cir. 138 F. 2d 729, 730-731, this court examined with great care the rules to be observed by the federal courts in the troublesome and delicate matter of issuing writs of habeas corpus on the application of persons who are imprisoned under final judgments of state courts. We stated our conclusions in an opinion by a unanimous court as follows:

[fol. 189] "There has been some confusion of thought recently with regard to the right of persons imprisoned under judgments of state courts which they claim to have been obtained in violation of rights guaranteed by the Constitution of the United States to apply to the lower federal courts for release under habeas corpus. It may be useful, therefore, to summarize the rules which we understand to be applicable in such cases. They are:

"1. The writ of habeas corpus may not be used in such cases as an appeal or writ of error to review proceedings in the state court. *Woolsey v. Best* 299 U. S. 1, 57 S.Ct. 2, 81 L. Ed. 3; *Moore v. Dempsey* 261 U. S. 86, 43 S.Ct. 265, 57 L. Ed. 543; *Grant v. Richardson* 4 Cir.



129 F. 2d 105; *Jones v. Dowd* 7. Cir. 128 F. 2d 331. The Judgment of the state court is ordinarily res adjudicata, not only of those issues which were raised and determined, but also of those which might have been raised. *Woolsey v. Best*, *supra*; *Ex parte Spencer* 228 U. S. 652; 33 S.Ct. 709, 57 L. Ed. 1010; *Morton v. Henderson* 5 Cir. 123 F. 2d 48. Ordinarily, failure to raise a constitutional question during trial amounts to waiver thereof (*United States v. Brady* 4 Cir. 133 F. 2d 476, 481); and only where failure to raise the question at the trial was due to ignorance, duress or other reason for which petitioner should not be held responsible, may resort be had to habeas corpus in the federal courts, and, even in these cases, only where it is made to appear that there has been such gross violation of constitutional right as to deny to the prisoner the substance of a fair trial and thus oust the court of jurisdiction to impose sentence. *Moore v. Dempsey*, *supra*; *Frank v. Mangum* 237 U. S. 309, 331, 35 S.Ct. 582, 59 L. Ed. 969; Cf. *Valentina v. Mercer* 201 U. S. 131, 26 S.Ct. 368, 50 L.Ed. 693.

"2. The federal court should not issue the writ, even in the extraordinary cases above indicted, unless it is made appear that petitioner has no adequate remedy [fol. 190] in the state courts. If he has such remedy by habeas corpus, writ of error coram nobis or otherwise, he must pursue it, and can have the writ from the federal courts only after all state remedies have been exhausted. *Mooney v. Holohan* 294 U.S. 103, 55 S. Ct. 340, 79 L.Ed. 791, 98 A.L.R. 406; *United States ex rel. Kennedy v. Tyler* 269 U.S. 13, 46 S. Ct. 1, 70 L. Ed. 138; *Jones v. Dowd* 7 Cir. 128 F. 2d 331; *Hawk v. Olson* 8 Cir. 136 F. 2d 910, certiorari denied 317 U.S. 697, 63 S.Ct. 435, 87 L.Ed.——. Ordinarily, adjudications made by the state courts in connection with applications made to them will be binding on the federal courts; and, if the prisoner is not satisfied with state court action, his remedy, after exhausting the rights of review provided by state law, is to apply to the Supreme Court of the United States for writ of certiorari to review the state court proceedings, not to seek such review through application to a lower federal court or

judge for a writ of habeas corpus. *Urquhart v. Brown* 205 U.S. 179, 27 S.Ct. 459, 51 L. Ed. 760, and cases there cited; *Frach v. Mass* 9 Cir. 106 F. 2d 820; *United States v. Brady* 4 Cir. 133 F. 2d 476, 482.

"3. The writ of habeas corpus may be issued by a federal court or judge in cases where petitioner is imprisoned under the judgment of a state court only if it is made to appear, (1) that there has been such gross violation of constitutional right as to deny the substance of a fair trial and the prisoner has not been able to raise the question on the trial because of ignorance, duress or other reason for which he should not be held responsible, (2) that he has exhausted his remedies under state law, and (3) that no adequate remedy is available to him under state law, either because state procedure does not provide adequate corrective process or because there are exceptional circumstances, such as local prejudice or an inflamed condition of the public mind, which render it impossible [fol. 191] or unlikely for him to obtain adequate protection of his rights in the courts of the state, i.e. he is entitled to the writ in the federal courts "only when the state courts will not, or cannot, do justice". *United States ex rel. Lesse v. Hunt* 2 Cir. 117 F. 2d 30, 31; *Moore v. Dempsey*, supra."

Under the rules thus laid down, appellants are clearly not entitled to the writ. The questions which they raise have been decided against them by the state trial court and are res judicata. Having been represented by competent counsel on the trial, they cannot claim that their contentions were not properly presented or that they were unable "to raise the question on the trial because of ignorance, duress or other reason for which they should not be held responsible." They cannot say that no adequate remedy was available to them under state law, for their contentions were made and passed upon by the trial court and there were no special circumstances such as local prejudice or an inflamed condition of the public mind to indicate that the state court could not or would not do justice. That they lost their full right of review through failure to comply with the rules does not negative the

adequacy of the state remedy. Surely one convicted in a state court may not have his case reviewed by a federal district court instead of the Supreme Court of the state merely by failing to comply with the state rules relating to appeals.

It is argued that the case is one of peculiar hardship because the default in complying with the states courts rules consisted in only one day's delay. This was a matter, however, which went not to the matter of hearing but of review of the hearing. It was before the Supreme Court of the United States in the application for certiorari; and, proper respect for that court requires that we assume that, [fol. 192] if it had thought that such enforcement of the rules of court amounted to a denial of a fair hearing to men condemned to death, it would have granted certiorari either to the Supreme Court or the trial court and would have reviewed the case. The case falls squarely, we think, within what was said by the Supreme Court in *Ex parte Hawk* 321 U. S. 114, 118, as follows.\*

"Where the state courts have considered and adjudicated the merits of his contentions, and this Court has either reviewed or declined to review the state court's decision, a federal court will not ordinarily re-examine upon writ of habeas corpus the questions thus adjudicated. *Salinger v. Loisel* 265 U.S. 224, 230-32. But where resort to state court remedies has failed to afford a full and fair adjudication of the federal contentions raised, either because the state affords no remedy, see *Mooney v. Holohan*, supra, 115, or because in the particular case the remedy afforded by state law proves in practice unavailable or seriously inadequate, cf. *Moore v. Dempsey* 261 U.S. 86; *Ex parte Davis* 318 U.S. 412, a federal court should entertain his petition for habeas corpus, else he would be remediless."

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\* See also *Darr v. Burford* 339 U.S. 200; *Adkins v. Smyth* 4 Cir. 188 F. 2d 452; *Goodwin v. Smyth* 4 Cir. 181 F. 2d 498; *Stonebreaker v. Smyth* 4 Cir. 163 F. 2d 498, 499.

The citation by the Supreme Court of *Moore v. Dempsey* 261 U.S. 86, and *Ex parte Davis* 318 U.S. 412, shows what is meant by the remedy afforded by state law proving in practice unavailable or seriously inadequate. In *Moore v. Dempsey* it appeared that the accused had been hurried to conviction, without regard to their rights, by a state court under mob domination. In *Ex parte Davis*, habeas corpus was denied because applicant had not exhausted his state remedies, the court saying that it would not [fol. 193] assume that the state court would not handle the case properly. Nothing is said in either of these cases, or elsewhere, to suggest that a state remedy is to be deemed unavailable or inadequate, so as to authorize resort to the federal courts, merely because applicant has failed to comply with the reasonable rules of the state court in applying for the remedy.

It must be remembered that the lower federal courts are given no power to review state court action. They can release persons held under judgments of state courts only on a holding that such judgments are absolutely void; and judgments are not rendered void by erroneous rulings, even though such rulings involve constitutional rights. The federal courts should not hesitate to grant the writ of habeas corpus and declare void any state court judgment based on such gross violation of constitutional rights as to deny to an accused the substance of a fair trial, where because of ignorance, duress or other reason for which he is not responsible he has been unable to protect himself. On the other hand, they should not, under the guise of exercising the habeas corpus power, usurp the power which has not been granted them of reviewing the action of state trial courts of coordinate jurisdiction. As was well said by Mr. Justice Minton, then a Circuit Judge, in *United States ex rel. Feeley v. Ragen* 7 Cir. 166 F. 2d 976, 981:

"There should not be rigid formalism in habeas corpus proceedings in which courts are seeking the substance as to the violation of constitutional rights. But it must be remembered that habeas corpus is a collateral attack by the courts of federal jurisdiction invading the province of state jurisdiction. \* \* \* We should



not lose sight of the fact that the federal courts are being used to invade the sovereign jurisdiction of the [fol. 194] states, presumed to be competent to handle their own police affairs, as the Constitution recognized when the police power was left with the states. We are not superlegislatures or glorified parole boards. We as courts look only to the violation of federal constitutional rights. When we condemn a state's exercise of its jurisdiction and hold that the exercise of its powers is not in accordance with due process, we are in effect trying the states. It is state action that is on trial, and a decent regard for the coordinate powers of the two governments requires that we give due process to the state. That is the reason that in habeas corpus cases the relator must first show that he has exhausted his state remedies to open the way for the federal courts to try the state's exercise of its sovereign power. For after all, the states represent the people more intimately than the federal government.

"To redress an alleged imbalance between the state's exercise of its power and the rights of the individual, the federal courts exercise a delicate function, the importance of which points up our duty to consider that imbalance in the light of the rights of organized society through the state government, representing all the people, as against the relator and defendant. There is no room here for crusades or the fulfillment of missions. We are to hold the balance true. *Frank v. Mangum*, 237 U.S. 309, 329, 35 S.Ct. 582, 59 L. Ed. 969; *Urquhart, Sheriff v. Brown*, 205 U.S. 179, 183, 27 S.Ct. 459, 51 L. Ed. 760; *Baker v. Grice*, 169 U.S. 284, 290, 18 S.Ct. 323, 42 L. Ed. 748."

For the reasons stated the order vacating the writ of habeas corpus and dismissing the petition of appellants will be affirmed.

*Affirmed.*

[fol. 195] SOPER, Circuit Judge, dissenting:

Two illiterate Negro youths were convicted of wilful and premeditated murder after a trial by jury in the Superior Court of Pitt County, North Carolina, and



sentence of death was passed upon them on June 6, 1949. Their attorneys immediately noted an appeal to the Supreme Court of North Carolina and were allowed 60 days in which to prepare and serve a statement of the case on appeal in accordance with the local practice. The most important ground of appeal was the charge, not without factual foundation, that the jury had been chosen in a way which violated the Constitution of the United States in that persons of the colored race were deliberately excluded from the jury lists from which the trial juries of the county were selected. Negroes comprised 44.2 per cent. of the persons in Pitt County over 21 years of age; and one-third of the persons on the tax list of the county which constituted the basic source for the jury list. The literacy rate for Negroes in the county was 74.2 per cent. Nevertheless no Negro has ever served on the Pitt County grand jury; less than 2 per cent. of the jury list consists of Negroes, and less than 1 per cent. of the petit jurors have been Negroes.

It has been decided in many cases that the exclusion of Negroes from juries solely because of their race deprives a Negro defendant of the equal protection of the laws guaranteed by the 14th Amendment. See *Ross v. Texas*, 341 U.S. 918; *Shepherd v. Florida*, 341 U.S. 50; *Brunson v. North Carolina*, 333 U.S. 851. The last citation shows that the Supreme Court of the United States on March 15, 1948 reversed without opinion the judgments of the Supreme Court of North Carolina in five criminal cases from Forsyth County in that state on account of the unconstitutional exclusion of Negroes. In one of these cases, as in [fol. 196] the case at bar, a single Negro served on the county jury, but in all, the evidence showed an unconstitutional discrimination. Subsequently the Supreme Court of North Carolina reversed two consecutive judgments of the Superior Court of Bertie County in *State v. Spiller*, 229 N.C. 67, and 231 N.C. 549, for similar defects in the constitution of the jury. It is not claimed that the evidence of discriminatory exclusion of Negroes from the jury lists in Pitt County, from which the jury in the pending case was chosen, differs materially from the evidence of discrimination in the Brunson and Sperry cases where the convictions were set aside.

Unfortunately, the convicted men in the pending case have never been able to secure a review of the judgment of the trial court on the merits either in the Supreme Court of North Carolina or in the Supreme Court of the United States, because their attorneys failed to file the statement of their case on appeal within the 60 day period fixed by the court. They served their statement on the solicitor of Pitt County, the prosecuting attorney, on August 6 instead of August 5, 1949, and hence were one day late. This delay did not embarrass the prosecution in any way and might well have been waived since the solicitor was able to prepare and serve his reply within the time allowed him by the court; and hence the final disposition of the case in the Supreme Court of the State was in no way retarded by the slip of defendants' attorneys. Nevertheless the solicitor moved the court to strike the case on appeal and this motion was granted. The result was that an appeal on the merits to the Supreme Court of North Carolina was precluded, notwithstanding the repeated efforts to secure such a hearing which are described in the opinion of the court herein.

Furthermore, the Supreme Court of the United States [fol. 197] did not consider the case on its merits in passing upon the application for certiorari. Seemingly, the court adopted the course advocated by the Attorney General of the State in his brief in opposition to the application for the writ wherein he asked the court to dismiss the petition on the ground that the Supreme Court of North Carolina had not passed on the merits of the case, but had dismissed the appeal for procedural reasons only and had suggested that the appellants might pursue another method which they had failed to do. It is true that during the argument in the Supreme Court of the United States the attorneys for the petitioners handed to the court a typewritten copy of the proceedings in the trial court and asked the court to consider it; but since it was not part of the record of the Supreme Court of North Carolina, which accompanied the petition for the writ, it is probable that the Supreme Court of the United States did not consider the merits but dismissed the petition because it appeared that the Supreme Court of North Carolina had only passed on local

procedural matters, leaving other remedies open to the appellants, and had not decided any federal question. The situation is not unlike that before the Supreme Court in *White v. Ragen*, 324 U.S. 760; where it was held that if the court is unable to say that the action of a state Supreme Court, brought to its attention by petition for certiorari, was not based on an adequate non-federal ground, the petition for certiorari must be dismissed, although it sufficiently alleges violation of constitutional rights, and in such case the dismissal of the writ does not bar an application to the Federal District Court for relief based on federal rights. It would seem that the attorneys for the state in the pending case, having induced the Supreme Court of the United States to dismiss the defendants' petition for certiorari on the ground that no [fol. 198] federal rights were involved, should now be precluded from using the dismissal of the writ of certiorari by the court as ground for dismissing the pending petition of habeas corpus in the federal District Court.

There is no attempt on the part of the State of North Carolina in the pending appeal to show that there was not a gross violation of the constitutional rights of the prisoners in the trial court. The state's argument proceeds upon the ground that the appellants lost any right to a review of the action of the trial court of Pitt County when their attorneys failed to conform meticulously to the local procedural requirements. The whole case for the state rests upon the established rule that a defendant convicted of crime may not use the writ of habeas corpus in lieu of an appeal to review the action of the trial court upon questions raised and decided at the trial. But this rule, although upheld in numerous decisions, as the opinion of the court shows, has frequently been held inapplicable and unjust under varying circumstances in many cases so that it has become well nigh essential to examine the history of every case in order to determine whether the rule should be enforced. The subject is illumined by the opinion of the court and the dissenting opinions in *Sunal v. Large*, 332 U.S. 174. There the majority of the court, speaking through Justice Douglas, held that the rule should be

applied, but spoke of the exceptions in the following terms:  
(P. 179)

" \* \* Yet, on the other hand, where the error was flagrant and there was no other remedy available for its correction, relief by habeas corpus has sometimes been granted. As stated by Chief Justice Hughes in *Bowen v. Johnston*, 306 U.S. 19, 27, the rule which requires resort to appellate procedure for the correction of errors 'is not one defining power but one which relates to the appropriate exercise of power.' That [fol. 199] rule is, therefore, 'not so inflexible that it may not yield to exceptional circumstances where the need for the remedy afforded by the writ of habeas corpus is apparent.' Id. p. 27. That case was deemed to involve 'exceptional circumstances' by reason of the fact that it indicated "a conflict between state and federal authorities on a question of law involving concerns of large importance affecting their respective jurisdictions." Id. p. 27. The court accordingly entertained the writ to examine into the jurisdiction of the court to render the judgment of conviction.

"The same course was followed in *Ex parte Hudgings*, 249 U.S. 378, where petitioner was adjudged guilty of contempt for committing perjury. The court did not require the petitioner to pursue any appellate route but issued an original writ and discharged him, holding that perjury without more was not punishable as a contempt. That situation was deemed exceptional in view of 'the nature of the case, of the relation which the question which it involves bears generally to the power and duty of courts in the performance of their functions, of the dangerous effect on the liberty of the citizen when called upon as a witness in a court which might result if the erroneous doctrine upon which the order under review was based were not promptly corrected. . . ."

See also the tentative classification of categories in the dissenting opinion of Justice Frankfurter in which habeas corpus has been entertained, and the reference therein to



the opinion of Judge Learned Hand in *U.S. ex rel. Kulick v. Kennedy*, 2 Cir. 157 F. 2d 811, 813, where he said:

"We shall not discuss at length the occasions which will justify resort to the writ, where the objection has been open on appeal. After a somewhat extensive review of the authorities twenty-four years ago, I concluded that the law was in great confusion; and the decisions since then have scarcely tended to sharpen the lines. We can find no more definite rule than that the writ is available, not only to determine points of jurisdiction, stricti juris, and constitutional questions; but whenever else resort to it is necessary to prevent a complete miscarriage of justice."

See also the opinion of Judge Chesnut speaking for this court in *Sunal v. Large*, 157 F. 2d 165, in which the exceptional circumstances justifying a departure from the general rule are discussed.

The special and unusual circumstances of the present case justify the statement that the constitutional rights of the prisoners were so clearly violated, that the judgment against them would have been reversed by the Supreme Court of North Carolina if it had felt free to entertain their appeal. So much is clear from the two reversals in *State v. Speller*, 229 N.C. 67 and 230 N.C. 345 based on the same kind of jury question as that raised in the pending case; and no one can doubt from a consideration of *Brinson v. North Carolina*, 333 U.S. 951, and numerous other decisions, that the same result would have been reached in the Supreme Court of the United States had that court reached the constitutional question involved.

It thus be so, the insistence by the state upon a technical and trivial procedural step as an impassible barrier to a review of the merits of the case seems to call loudly for the intervention of the federal court. The trial court of Pitt County at two important junctures in the trial stopped the defendants when they sought to raise the jury question. During the period when they were represented by counsel appointed by the court their attorneys allowed them to plead not guilty without raising any objection to the jury



[fol. 201] list of the county, with which it may be assumed they were familiar; and later when the attorneys selected by the prisoners raised the same point before the trial, they were told that the prisoners by pleading to the indictment, had lost the opportunity to challenge the jury as of right and that the matter lay within the discretion of the court. The court exercised this discretion against the prisoners. Again when the attorneys for the prisoners were one day late in filing the statement of their case on appeal the court struck their statement of the case from the record, so that the appeal on the jury question was effectively denied.

The court's strict application of the procedural rules in a capital case in these two instances can hardly be approved as a proper exercise of judicial discretion. The defendants merely asked for rulings which would have enabled them to obtain a review by the highest court of the state of the trial court's action on a grave constitutional question; and the relief could have been granted without interfering with the enforcement of the criminal laws of the state. It can hardly be doubted that the decision in each case lay within the discretion of the judge, but once it was taken, the Supreme Court of the state deemed itself powerless to interfere. Thus there is presented an impasse which can be surmounted only by a proceeding like that before this court. We have been told time and again that legalistic requirements should be disregarded in examining applications for the writ of habeas corpus and the rules have been relaxed in cases when the trial court has acted under duress or perjured testimony has been knowingly used by the prosecution, or a plea of guilty has been obtained by trick, or the defendant has been inadequately represented by counsel. *Hawk v. Olsen*, 326 U.S. 271; *Darr v. Bufard*, 339 U.S. 200, 203. It is difficult to see any material distinction in practical effect [fol. 202] between these circumstances and the plight of the prisoners in the pending case who have been caught in the technicalities of local procedure and in consequence have been denied their constitutional right.

The writ should be granted in the pending case and the prisoners remanded to the state authorities to be tried in accordance with the law of the land.

[fol. 203] UNITED STATES COURT OF APPEALS FOR THE FOURTH  
CIRCUIT

No. 6330

BENNIE DANIELS and LLOYD RAY DANIELS, Appellants,

VS.

ROBERT A. ALLEN, Warden, Central Prison of the State of  
North Carolina, Raleigh, North Carolina, Appellee.

JUDGMENT—Filed and Entered November 5, 1951

Appeal from the United States District Court for the  
Eastern District of North Carolina.

This cause came on to be heard on the record from the  
United States District Court for the Eastern District of  
North Carolina, and was argued by counsel.

On consideration whereof, it is now here ordered and  
adjudged by this Court that the order of the said District  
Court appealed from in this cause, be, and the same is  
hereby, affirmed with costs.

November 5th, 1951.

John J. Parker, Chief Judge, Fourth Circuit.

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IN UNITED STATES COURT OF APPEALS

November 29, 1951, petition of appellants for stay of  
mandate is filed.

ORDER STAYING MANDATE—Filed December 3, 1951

Upon the petition of the appellants, by their counsel, and  
for good cause shown,

It is ordered that the mandate of this Court in the above  
entitled case be, and the same is hereby, stayed pending  
the application of the said appellants in the Supreme Court  
[fol. 204] of the United States for a writ of certiorari to  
this Court, unless otherwise ordered by this or the said  
Supreme Court, provided the application for a writ of

certiorari is filed in the said Supreme Court within 30 days from this date.

Nov. 30th, 1951.

John J. Parker, Chief Judge, Fourth Circuit.

[fol. 205] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 206] SUPREME COURT OF THE UNITED STATES

No. 271, Misc. —, October Term, 1951

[Title omitted]

ORAL ARGUMENT—March 3, 1952

On petition for writ of Certiorari to the United States Court of Appeals for Fourth Circuit.

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby granted. The case is transferred to the appellate docket as No. 626.

It is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.